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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 830. 121.

ELGIN NATIONAL WATCH COMPANY, APPELLANT,

vs.

ILLINOIS WATCH CASE COMPANY, THOMAS W. DUNCAN, AND MYER ABRAHAM.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

FILED AUGUST 17, 1899.

(17,493.)

(17,493.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 379.

ELGIN NATIONAL WATCH COMPANY, APPELLANT,

vs.

ILLINOIS WATCH CASE COMPANY, THOMAS W. DUNCAN, AND MYER ABRAHAM.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 23, 1899.

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IN THE

UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SEVENTH CIRCUIT.

OCTOBER TERM, A. D. 1897.

No. 525.

ILLINOIS WATCH-CASE COMPANY, THOMAS W. DUNCAN AND MYER ABRAHAM,

Appellants,

vs.

ELGIN NATIONAL WATCH COMPANY,

Appellee.

MR. THOMAS A. BANNING,
MR. EPHRAIM BANNING,
Counsel for Appellants.

MR. LYSANDER HILL,
MR. GEORGE S. PRINDLE,
Counsel for Appellee.

Appeal from the Circuit Court of the United States for the Northern District of Illinois, Northern Division.

1 Pleas in the Circuit Court of the United States for the Northern District of Illinois, Northern Division, in Chancery sitting at the United States Court room, in the City of Chicago, in said District and Division, before the Hon. JOHN W. SHOWALTER, Circuit Judge of the United States for the Seventh Judicial Circuit, on Wednesday, the twenty-seventh day of April, in the year of our Lord one thousand eight hundred and ninety-eight, of the December term of said Court, 1897, and of our Independence the one hundred and twenty-second year.

S. W. BURNHAM,
Clerk.

Elgin National Watch Company
23,974 *vs.*
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham. } In Chancery.

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS.

Elgin National Watch Company
vs.
Illinois Watch-Case Company, Thomas W. Duncan and Myer Abraham. } In Chancery. 23,374.

Be it remembered, that on this day, to wit, the fourth day of January, 1896, came the complainant in said entitled cause, by its solicitors, and filed in the clerk's office of said court its bond for costs and bill of complaint, which said bond and bill are respectively in words and figures following, to wit:

BOND FOR COSTS.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

The Elgin National Watch Company
vs.
The Illinois Watch-Case Company *et al.* } In Equity.

I enter myself as security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action or to any of the officers of this court, and in default of payment by the complainants of any costs ordered or adjudged to be paid by it, hereby agree and stipulate that execution may issue against my prop-

erty for all costs not exceeding two hundred dollars taxed against ——

Dated this 4th day of January, A. D. 1896.

GEO. S. PRINDLE,
Residence 2001, Chicago, Ills.

Acknowledged before me this 4th day of January, 1896.

S. W. BURNHAM,
Clerk U. S. Circuit Court, Nor. Dist. Ills.

(Endorsed): Filed January 4, A. D. 1896, S. W. Burnham, Clerk.

UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

Elgin National Watch Company,
Complainant,
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham,
Defendants.
} In Equity.

To the Honorable Judges of the Circuit Court of the United States for the Northern District of Illinois:

The Elgin National Watch Company, a corporation created and organized under the laws of the State of Illinois, having its principal place of business at Elgin, and its office at Chicago, in said State of Illinois, complainant, brings this its bill of complaint against the Illinois Watch Case Company, a corporation created and organized under the laws of the State of Illinois, and having its principal place of business at said Elgin, Illinois, Thomas W. Duncan, of said Elgin, president, treasurer and superintendent, and Myer Abraham, of said

Elgin, secretary of said Illinois Watch Case Company, defendants.

1. And thereupon your orator complains and says: That prior to the 11th day of April, A. D. 1868, your orator was engaged in the business of manufacturing watches at Elgin, Illinois, which was then a small town containing no other manufactory of watches or watch-cases; that your orator had built up at said town a very large business in the manufacture of watches and watch-movements, and that said watches and watch-movements, so made by your orator, had become known all over the world, and had been largely sold and used not only in this but in foreign countries.

2. Your orator further informs your Honors that at and before said 11th day of April, A. D. 1868, your orator had adopted the word "Elgin" as a trade-mark for its said watches and watch-movements; that said trade-mark was marked upon the watches and watch-movements made by your orator, both upon those which entered into commerce in this country and those which were exported to and sold in foreign countries; that your orator's watches became known all over the world as Elgin watches, and their origin and source, as a product of your orator's manufacture, were distinguished from those of all other watches manufactured in any part of the world by said distinguishing word or trade-mark, "Elgin;" that from said 11th day of April, A.D. 1868, to the present time, your orator, both in the goods manufactured and sold by it in this country and those exported by it to and sold in foreign countries, has continued to use said trade-mark upon its watches and watch-movements, and is still using it, and that said trade-mark has always served and still serves to distinguish your orator's product from that of all other manufacturers.

3. Your orator further shows unto your Honors that at the time of its adoption of said trade-mark no other person, firm or corporation engaged in the manufacture or sale of watches was using the word "Elgin" as a trade-mark or as a designation to designate its goods from those of other manufacturers, and that your orator had the legal right to appropriate and use the said word as its lawful trade-mark for its watches and watch-movements.

4. Your orator further shows unto your Honors that the watches and watch-movements made by your orator have achieved a very great reputation throughout the world, and that such reputation is of great commercial value to your orator in its business aforesaid.

5. Your orator further shows unto your Honors that on the 19th day of July, A. D. 1892, under the act of Congress relating to the registration of trade-marks, your orator caused said trade-mark to be duly registered in the Patent Office of the United States according to law, as by the certificate of said registration, or a copy thereof, duly certified by the Commissioner of Patents, here in court to be produced, will more fully and at large appear.

6. Your orator further shows unto your Honors that within years last past the defendants, wrongfully contriving and seeking to avail themselves of the benefit of your orator's said trade-mark, to profit by the great reputation of your orator's watches and watch-movements, and to deceive the public into purchasing, as your orator's watches, watches not made by your orator, but of a quality greatly inferior to those made by your orator, have unlawfully and in violation of your orator's rights, as aforesaid, appropriated and used your orator's

said trade-mark upon their own manufacture; that the defendants have done this by engraving or otherwise affixing the word "Elgin" to the watch-cases made and sold by them; that such watch-cases are adapted to receive watch-movements of different construction from those made by your orator; that inferior watch-movements are liable to be, and often are, encased in them; and that, when so encased, the entire watch, including both movement and case, appears upon the market with your orator's trade-mark upon it, thereby leading the public to believe that said watch, as an entirety, was made by your orator, and enabling the parties wrongfully using your orator's trade-mark as aforesaid to profit by the great reputation of your orator, to palm off other and inferior goods as goods made by your orator, to injure the reputation of your orator as a watchmaker, and to deprive your orator of a portion of the business and patronage which your orator would otherwise receive from the public; that your orator in its business aforesaid has been greatly damaged and injured by such wrongful use of its trade-mark by the said defendants, and that if the same shall continue it will work to your orator irreparable damage and injury in and about its business aforesaid.

7. Your orator further informs your Honors that it has notified the said defendants of its exclusive right to said trade-mark and of their wrongful infringement of the same as aforesaid, and has requested them to desist therefrom, but that the said defendants have declined and refused, and still decline and refuse, to desist from their unlawful appropriation of your orator's said trade-mark, and threaten to continue the same.

All of which actings and doings are contrary to equity

and good conscience and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator is remediless at common law and can have adequate relief only in this Honorable Court, where most matters of this sort are properly cognizable and relievable; to the end, therefore, that the defendants may, if they can, show why your orator may not have the relief hereby prayed, and may, according to the best and utmost of their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the premises; and may be compelled by decree of this court to pay to your orator the damages occasioned to it by the defendants' said unlawful infringement of said trade-mark, and to pay the costs of this suit, and to desist from further infringing your orator's rights in the premises.

May it please your Honors, the premises being considered, to grant unto your orator a writ or writs of injunction under the seal of this Honorable Court, and, according to law, perpetually enjoining and restraining the defendants, to wit, the Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, their clerks, attorneys, agents, servants and workmen, from directly or indirectly making or selling any watch-case or watch-cases marked with your orator's said trade-mark, and from using your orator's said trade-mark in any way upon watches or watch-cases or in the defendants' printed advertisements, circulars, labels, or the boxes or packages in which their said watch-cases are put up or exposed for sale; and that your orator may have such other and further relief in the premises as the nature of the case may require and to your Honors shall seem meet.

And may it please your Honors to grant unto your orator a writ or writs of subpœna of the United States of America, directed to the said defendants, the Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, according to law, commanding them, and each of them, on a certain day and under a certain penalty, therein to be mentioned, to be and appear in this Honorable Court, then and there to answer all and singular the premises, and to stand to, perform and abide such further order, direction and decree as may be made against them.

And your orator, as in duty bound, will ever pray.

PRINDLE & RUSSELL,
Solicitors and of Counsel for Complainants.

LYSANDER HILL,
Of Counsel for Complainant.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Thomas M. Avery, being duly sworn, deposes and says that he is the president of the Elgin National Watch Company, the complainant in the foregoing bill of complaint; that he has read the same and knows the contents thereof; that the same is true of his own knowledge, except in those matters therein stated to be on information and belief, and as to those matters he believes it to be true.

THOMAS M. AVERY.

Subscribed to and sworn before me this 3d day of January, A. D. 1896.

D. WILEY MCCAUGHRY,
Notary Public.

On the same day, to wit, the fourth day of January, 1896, a writ of subpœna issued out of the clerk's office of said court, directed against the defendants in said entitled cause, which said writ, together with the memorandum thereto attached and the marshal's return thereon endorsed, is in the words and figures following to wit:

SUBPŒNA.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION.

The United States of America, to Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, Greeting:

We command you, and every of you, that you appear before our judges of our Circuit Court of the United States of America for the Northern District of Illinois, at Chicago, in the Northern Division of said District, on the first Monday in the month of February next, to answer the bill of complaint of Elgin Watch Company this day filed in the clerk's office of said court, in said City of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the Marshal of the Northern District of Illinois to execute.

Witness the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago aforesaid, this fourth day of January, in the year of
[SEAL.] our Lord one thousand eight hundred and ninety-six, and of our Independence the 120th year.

S. W. BURNHAM,
Clerk.

MEMORANDUM.

The above-named defendants are notified that unless they and each of them shall enter their appearance in the clerk's office of said court, at Chicago aforesaid, on or before the day to which the above writ is returnable, the complainant's bill will be taken against them as confessed and a decree entered accordingly.

S. W. BURNHAM,
Clerk.

MARSHAL'S RETURN.

I have duly served the within writ within my district in the following manner, to wit:

Upon the Illinois Watch Case Company by reading and by delivering a true copy of the same to Thomas W. Duncan, the president of the aforesaid company, and by reading and by delivering a true copy of the same to Thomas W. Duncan personally on the 6th day of January, A. D. 1896, also upon Myer Abraham, by reading and by delivering to him a true copy thereof on the 9th day of January, A. D. 1896.

J. W. ARNOLD, U. S. Marshal.
By JOHN A. LOGAN, Deputy.

(Endorsed): Filed Jan. 10, 1896, S. W. Burnham, Clerk.

Afterwards, to wit, on the third day of February, 1896, came the defendants in said entitled cause, by their solicitors, and entered their appearance in said cause in words and figures following, to wit:

APPEARANCE.

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS.

Elgin National Watch Company
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham. } In Equity.

We hereby enter the appearance of the defendants in the above-entitled cause.

BANNING & BANNING,
Solicitors for Defendants.

CHICAGO, February 1, 1896.

(Endorsed): Filed Feb. 3, 1896, S. W. Burnham, Clerk.

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS.

Elgin National Watch Company, *Complainant,*
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, *Defendants.*
} In Equity.

The demurrer of the above-named defendants to the bill of complaint of the said Elgin National Watch Company, complainant.

These defendants, by protestation, not confessing all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same is therein set forth and alleged, demur to the said bill, and for cause of demurrer show that the said complainant has not in and by said bill made such a case as entitles it in a court of equity to any relief against the defendants, or either of them, touching any of the matters therein complained of; and for cause of demurrer show:

1. That the word or name "Elgin," claimed by the complainant as a trade-mark or name, is a geographical name, and as such not appropriable as a word or name in which an exclusive right can exist in favor of the complainant, or any one else.

2. That the word or name "Elgin," claimed by the complainant as a trade-mark or name, is a geographical name, and as such not appropriable as a word or name in which any exclusive right can exist as against others doing business at the City of Elgin, as are the defendants, as appears from the bill of complaint.

3. That although the bill of complaint declares on the

word or name "Elgin," as a registered trade-mark, it does not appear from the allegations of the bill that the defendants are using such name or word in commerce with foreign nations or Indian tribes, nor in any way, so far as the bill shows, except in domestic commerce.

Wherefore, and for divers other good causes of demurrer appearing in said bill, the defendants demur thereto and pray the judgment of this Honorable Court whether they should be compelled to make any further or other answer to said bill, and humbly pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

ILLINOIS WATCH CASE COMPANY,
of Elgin, Ill.
By THOMAS W. DUNCAN, Presdt.
THOMAS. W. DUNCAN.
MYER ABRAHAM.

BANNING & BANNING,
Solicitors for Defendants.

I do hereby certify that, in my opinion, the above demurrer is well founded in point of law.

THOMAS A. BANNING.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

Thomas W. Duncan, being duly sworn, deposes and says he is the president of the above-named defendant company and one of the defendants, and that the above demurrer is not interposed for purposes of delay.

THOMAS W. DUNCAN.

Subscribed and sworn to before me this 24th day of February, 1896.

ANNIE C. COURTENAY,
Notary Public

[SEAL.]

Afterwards, to wit, on the first day of May, 1896, in the December term of said court, 1895, in the record of proceedings thereof before the Hon. Peter S. Grosscup, District Judge, appears the following entry, to wit:

ENTRY.

Elgin National Watch Company
vs.
Illinois Watch Case Company. } 23,974.

Now come the parties, by their solicitors; now comes on to be heard the demurrer to the bill of complaint heretofore filed herein. The court, after hearing the arguments of counsel in full, takes the matter under advisement.

Afterwards, to wit, on the eleventh day of July, in the July term of said court, 1896, in the record of proceedings thereof in said entitled cause before the Hon. Peter S. Grosscup, District Judge, appears the following entry, to wit:

ENTRY.

Elgin National Watch Company
vs.
Illinois Watch Case Company *et al.* } In Chancery. 23,974.

Now come the parties, by their solicitors, and the court having considered and being now fully advised, overrules the demurrer to the bill of complaint herein.

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS.

Elgin National Watch Company
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham.
} In Equity.

The joint and several answer of the Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, defendants, to the bill of complaint of the Elgin National Watch Company, complainant.

These defendants, now and at all times saving and reserving unto themselves all and all manner of benefit and advantage of exception that can or may be had or taken to the many errors, inaccuracies and insufficiencies in the said bill of complaint contained, for answer thereunto, or to so much and such parts thereof as they are advised it is material or necessary to make answer unto, answering say:

These defendants admit that the Illinois Watch Case Company is a corporation organized and existing under the laws of the State of Illinois, and having its principal office or place of business at the City of Elgin, Illinois; and that the defendants Duncan and Abraham sustain the official relations to the said company as in and by said bill alleged.

These defendants, further answering, say that as to whether the complainant was engaged in the business of manufacturing watches at the City of Elgin, Illinois, prior to the 11th day of April, 1868; as to whether the City of Elgin was then a small town containing no other manufactory of watches or watch-cases; as to whether the complainant has built up in such town a large business in

the manufacture of watches and watch-movements; as to whether said watches and watch-movements so made by the complainant became known all over the world, and are largely sold and used not only in this but in foreign countries; as to whether the complainant prior to said 11th day of April, 1868, adopted the word or name "Elgin" as a trade-mark for its said watches and watch-movements; as to whether said word or name "Elgin" was marked upon the watches and watch-movements made by the complainant, both upon those which entered into commerce in this country and those which were exported to and sold in foreign countries; as to whether the complainant's watches became known throughout the world as "Elgin" watches and as the product of the complainant's manufacture; as to whether said watches and watch-movements were distinguished by the word or name "Elgin" from watches and watch-movements manufactured by others; as to whether the complainant has continued to use said name or word "Elgin" upon the watches and watch-movements manufactured and sold by it in this country and exported by it to foreign countries; as to whether at the time the complainant began to use the word or name "Elgin" on its watches or watch-movements no other person, firm or corporation engaged in the manufacture and sale of watches was using the word "Elgin" to designate or distinguish its goods from those of others; as to whether the watches or watch-movements made by the complainant and marked with the word or name "Elgin" achieved a great or any reputation throughout the world, so as to be of commercial value to the complainant; these defendants neither admit nor deny the allegations of said bill of complaint, but call upon the complainant for strict proof of the same so far as it may be advised is necessary.

These defendants, further answering, say that they are advised and believe the fact to be that on or about the 19th day of July, 1892, the complainant caused the word or name "Elgin" to be registered in the Patent Office of the United States; but these defendants, on information and belief, deny that the said registration was a legal one or such as the act of Congress legally permitted to be done.

These defendants, further answering, deny that they have within the three years last past, or at any other time, been wrongfully contriving and seeking to avail themselves of the benefit of any reputation or prestige which the complainant enjoyed from its use of the name or word "Elgin;" or that they have been attempting to deceive the public into purchasing the goods manufactured by them under the belief or supposition that they were of complainant's manufacture; or that they have unlawfully and in violation of any rights of the complainant appropriated and used the word or name "Elgin;" or that they have in any way done anything which they did not have the perfect legal right to do, by which the complainant has been in any way damaged or injured; or that they have in any way led the public to believe that the watches or watch-movements sold in the cases manufactured by these defendants were the complainant's watches or watch-movements; or that they have in any way enabled others to palm off and sell inferior goods as the goods of the complainant's manufacture, to the injury of the complainant in its reputation or otherwise, or so as to deprive the complainant of a portion of its business patronage, which it would otherwise have received from the public; or that the complainant has been greatly or at all damaged and injured by any wrongful act perpetrated, permitted or sanctioned by these defendants.

These defendants, further answering, say that they have never used the word or name "Elgin" on watches or watch-movements; that they have never manufactured or sold, or offered for sale, watches or watch-movements; that the business of the defendant company is the manufacture and sale of watch-cases in which watches or watch-movements are encased or enclosed; that the complainant has never manufactured or sold watch-cases with the word or name "Elgin" on them; that the business carried on by the defendant company and the complainant are entirely distinct and separate the one from the other; that wherever the defendant company has used the name or word "Elgin" on its watch-cases it has been usually —if not invariably—in connection with some other word, as "Elgin Giant" or "Elgin Commander" or "Elgin Tiger," or some other word used in combination with the word "Elgin" or "Elgin, Illinois;" that the complainant has recognized the difference or distinction between the use of the word or name "Elgin" alone and the use of such word or name in combination or in connection with some other word; that it has registered the word "Elgin" in combination with some other word as well as by itself separately, and has thus sought to appropriate as far as possible the use of the name or word "Elgin," both separately and in combination, as will appear from the certificates of such registration which the defendants will produce and offer in evidence at the proper time; that the registration declared on in the bill of complaint herein is of the word or name "Elgin" separately and by itself, which, as above explained, the defendant company has seldom—if at all—used, and which it has never used alone or separately, as registered by the complainant, upon goods exported to foreign nations or used in foreign commerce; that the word

"Elgin" as used by the defendant company, if used alone, has been used in domestic commerce and to inform the public of the place where the watch-cases manufactured and sold by the defendant company have been manufactured; that the watch-cases manufactured and sold by the defendant company have been sold upon a guarantee running for a number of years, so that it has been necessary to inform purchasers of the location or city where the defendant company is carrying on its business in order that purchasers would be able to find the defendant company in case it became necessary to call upon such company to make good its guarantees of its watch-cases; and that, owing to the distinct lines of business in which the complainant and the defendant company are engaged, no misunderstanding or confusion has arisen or can arise, as these defendants are informed and believe.

These defendants, further answering, on information and belief, allege that the word "Elgin," being a geographical name or word indicating the name of a prominent manufacturing city in which any manufacturer of watches, watch-movements or watch-cases is at liberty to locate and carry on his business, is not appropriable by any single manufacturing person, firm or corporation, but is open as of common right to the use of any person, firm or corporation carrying on business at the City of Elgin.

Without this, that any other matter, cause or thing in said bill of complaint contained, and not herein and hereby well and sufficiently answered unto, traversed and denied, confessed or avoided, is true; all of which matters and things these defendants are ready to aver, maintain and prove, as this Honorable Court shall direct, and

beg to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

ILLINOIS WATCH CASE COMPANY,
By THOMAS W. DUNCAN,
Presdt.

THOMAS W. DUNCAN,
By THOMAS A. BANNING,
Attorney.

BANNING & BANNING,
Solicitors for Defendants and of Counsel.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.

Thomas W. Duncan, president of the defendant corporation, being first duly sworn, deposes and says that he has read the foregoing answer subscribed by the defendant corporation and the defendants personally, and knows the contents thereof; and that the same is true of his own knowledge, except as to matters therein stated on information and belief, and as to these he believes it to be true.

THOMAS W. DUNCAN.

Subscribed and sworn to before me this }
12th day of August, A. D. 1896. }

ANNIE C. COURTENAY,
Notary Public.

[SEAL.]

UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS.

Elgin National Watch Company
vs.
Illinois Watch Case Company,
Thomas W. Duncan and Myer Abraham.

REPLICATION.

The replication of the Elgin National Watch Company to the joint and several answer of the Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, defendants, to the bill of complaint of the Elgin National Watch Company, complainant.

This repliant, saving and reserving to itself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto says that it will aver and prove its said bill to be true, certain and sufficient in the law to be answered unto; and that the said answer of the said defendants is uncertain, untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true; all which matters and things this repliant is and will be ready to aver and prove, as this Honorable Court shall direct; and humbly prays as in and by its said bill it has already prayed.

CHICAGO, August 27, 1896.

PRINDLE & RUSSELL,
Complainant's Counsel.

PAGE CUT OFF

22 Afterwards, to-wit, on the twenty-first day of June, 1897, in the December term of said Court, 1896, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, Circuit Judge, appears the following entry to-wit:

ORDER OF JUNE 21, 1897.

Hearl 1897.

Elgin National Watch Company
23,974 *vs.*
Illinois Watch Case Company, *et al.*

Now come the parties by their solicitors; now this cause comes on to be heard on pleadings and proofs filed herein. The Court, after hearing the arguments of counsel in full takes this matter under advisement.

Afterwards, to-wit, on the thirty-first day of March, 1898, there was filed in the clerk's office of said Court a certain Opinion by Judge Showalter, which said Opinion is in the words and figures following, to-wit:

OPINION.

Opir March

UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS.

Elgin National Watch Company, *Complainant*,
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham.

In Equity.
No. 23,974.

23 SHOWALTER, *Circuit Judge.*

The complainant, under the name of National Watch Company, about 1865, commenced the business of manufacturing watch movements at the town of Elgin in Kane County, Illinois. From the first it placed on its watch movement as a mark of origin the word "Elgin." From this mark these movements, when cased and sold become known to the public as Elgin watches. In 1874, the complainant, apparently because its product had become known the world over as Elgin watches rather than as indicating the town at which its manufacturing operations were carried on, changed its

ued name to Elgin National Watch Company and thenceforward under that name continued the watch manufacturing business. The home office of the Elgin National Watch Company is in the City of Chicago; but its place of manufacture has always been and continues to be the town of Elgin. The watch-movements made by the
24 complainant are sold all over the world; that is to say, in all countries where watches are in use, and the mark "Elgin" on such watch-movement, usually on the dial, indicates to the trading public that such watch-movement was made at the manufacturing establishment which produces Elgin watches, namely, by the Elgin National Watch Company. This mark has this significance where the town of Elgin is entirely unknown. In other words, this mark used by complainant as here stated, performs distinctly the function of a trade-mark. It indicates in the trade-mark sense the origin of the watch-movement on which it is placed. Notwithstanding the fact, therefore, that the word "Elgin" is the name of a town and in that sense a geographical name, yet, since in this instance it answers the function of a trade-mark, my conviction is that it is a trade-mark and should be so treated. The theory of unfair competition in trade would here rest on the fact that the
25 mark of origin on the manufactured article is put on or attached to other articles of the same kind not made by complainant and for the purpose of representing such article as the product of complainant. This is, therefore, strictly a trade-mark case.

In 1876, the word "Elgin" was registered by complainant in the Patent Office at Washington under an Act of Congress subsequently declared unconstitutional and void. Afterwards, and in 1892, and under the present law (1881) on the subject, this word was again registered as a trade-mark by complainant.

The defendants manufacture watch cases. Their place of manufacture was formerly in Chicago. In 1890 they changed their location to Elgin with the purpose, as it seems to me, of giving some color of right to a designed trespass on complainant's good-will. The watch movement or time-keeping mechanism is the essential part of a watch. Case manufacturers have not usually put
26 marks of origin on their peculiar product—at least no such marks as would mislead touching the maker of the movement. There was and is but one establishment at Elgin in which watch movements are made, namely, that of complainant. Defendants place upon some of their watch cases the words "Elgin Tiger"; upon others, the words "Elgin Commander"; and upon others "Elgin Giant." They procured the registration of the words

"Elgin Tiger" in the Patent Office at Washington in December, 1893, and the words "Elgin Giant" in April, 1894. A watch case is intended to enclose a watch-movement. The customer buys the cased movement as a watch. I think the evidence shows very clearly that the intent of the defendants and the effect of what they did was to use the reputation of the complainant for the purpose of enabling inferior movements not made by the Elgin National Watch Company but enclosed in cases made by the defendants, to be
27 sold as Elgin watches. That is to say, the idea was that people familiar with, or having knowledge of, the article manufactured by the complainant might be induced to buy as an Elgin watch an inferior or different movement if placed in one of the cases made by the defendant and marked with the word "Elgin" in one of the combinations "Elgin Tiger" "Elgin Giant," or "Elgin Commander."

Opini March

The bill alleges that the watch-movement made by the complainant is intended for and is the subject-matter of commerce in foreign countries, but it does not contain the averment that the defendant's product is also sold in foreign countries, or intended for foreign commerce. It is a fair inference not only from matters put in evidence by the complainant, but also from the sworn statement made by defendants in procuring the registrations mentioned above, which statements were put in evidence by defenants, that
28 their product is also intended to be, and is in fact, the subject of foreign or international commerce. I think upon this showing complainant may be permitted to amend its bill in the respect here referred to and that a decree for an injunction may go.
(Endorsed) Filed March 31, 1898. S. W. Burnham, Clerk.

Afterwards to-wit: on the twelfth day of April, 1898, in the December term of said Court, 1897, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, Circuit Judge appears the following entry to-wit—

Order Bill, A

ORDER OF APRIL 12, 1898.

Elgin National Watch Company,
vs
Illinois Watch Case Company. } 23974.

On motion of Messrs. Banning and Banning, solicitors for defendants, it is ordered that the complainant be required to amend

its bill in this cause, and present draft of decree pursuant to the decision announced herein on the 31st day March, 1898, within fifteen days from this date.

29 Afterwards to-wit: on the twenty seventh day of April, 1898, came the complainant in said entitled cause by its solicitors and filed in the clerk's office of said court its Amended Bill, which said Amended Bill is in words and figures following to-wit:

AMENDED BILL.

Bill,
, 1898.

UNITED STATES CIRCUIT COURT NORTHERN DISTRICT OF ILLINOIS—NORTHERN DIVISION.

Elgin National Watch Company, *Complainant*,
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, *Defendants.*
} In Equity.

AMENDED BILL.

To the Honorable Judges of the Circuit Court of the United States for the Northern District of Illinois.

30 The Elgin National Watch Company, a corporation created and organized under the laws of the State of Illinois, having its principal place of business at Elgin, and its office at Chicago, in said State of Illinois, complainant, brings this its bill of complaint against the Illinois Watch Case Company, a corporation created and organized under the laws of the State of Illinois, and having its principal place of business at said Elgin, Illinois, Thomas W. Duncan, of said Elgin, president, treasurer and superintendent, and Myer Abraham, of said Elgin, secretary of said Illinois Watch Case Company, said Duncan and Abraham being citizens of the State of Illinois, defendants.

1. And thereupon your orator complains and says: That prior to the 11th day of April, A. D. 1868, your orator was engaged in the business of manufacturing watches at Elgin, Illinois, which was then a small town containing no other manufactory of watches and watch-movements, and that said watches and watch-movements,
31 so made by your orator, had become known all over the world,

and had been largely sold and used not only in this but in foreign countries. A filed

2. Your orator further informs your honors that at and before said 11th day of April, A. D. 1868, your orator had adopted the word "Elgin" as a trade-mak for its said watches and watch-movements; that said trade-mark was marked upon the watches and watch-movements made by your orator, both upon those which entered into commerce in this country and those which were exported to and sold in foreign countries; that your orator's watches became known all over the world as Elgin watches, and their origin and source, as a product of your orator's manufacture, were distinguished from those of all other watches manufactured in any part of the world by said distinguishing word or trade mark "Elgin"; that from said 11th day of April, A. D. 1868, to the present time, your orator, both in the goods manufactured and sold by it in
32 this country and those exported by it to and sold in foreign countries, has continued to use said trade-mark upon its watches and watch movements and is still using it, and that said trade-mark has always served and still serves to distinguish your orator's product from that of all other manufacturers.

3. Your orator further shows unto your honors that at the time of its adoption of said trade-mark no other person, firm or corporation engaged in the manufacture or sale of watches was using the word "Elgin" as a trade-mark or as a designation to designate its goods from those of other manufacturers, and that your orator had the legal right to appropriate and use the said word as its lawful trade-mark for its watches and watch-movements.

4. Your orator further shows unto your honors that the
33 watches and watch-movements made by your orator have achieved a very great reputation throughout the world, and that such reputation is of great commercial value to your orator in its business aforesaid.

5. Your orator further shows unto your honors that on the 19th day of July, A. D. 1892, under the act of Congress relating to the registration of trade-marks, your orator caused said trade-mark to be duly registered in the Patent Office of the United States according to law, as by the certificate of said registration or a copy thereof, duly certified by the Commissioner of Patents, here in Court to be produced will more fully and at large appear.

6. Your orator further shows unto your Honors that within years last past the defendants wrongfully contriving and seeking to

Bill, 1898. avail themselves of the benefit of your orator's said trade-mark, to profit by the great reputation of your orator's watches and
34 watch-movements and to deceive the public into purchasing, as your orator's watches, watches not made by your orator, but of a quality greatly inferior to those made by your orator, have unlawfully and in violation of your orator's rights, as aforesaid, appropriated and used your orator's said trade-mark upon their own manufacture; that the defendants have done this by engraving or otherwise affixing the word "Elgin" to the watch-cases made and sold by them; that such watch-cases are adapted to receive watch-movements of different construction from those made by your orator; that inferior watch-movements are liable to be, and often are, encased in them; and that, when so encased, the entire watch, including both movement and case, appears upon the market with your orator's trade-mark upon it, thereby leading the public to believe that said watch, as an entirety, was made by your orator, and enabling the parties wrongfully using your
35 orator's trade-mark as aforesaid to profit by the great reputation of your orator, to palm off other and inferior goods as goods made by your orator, to injure the reputation of your orator as a watchmaker, and to deprive your orator of a portion of the business and patronage which your orator would otherwise receive from the public; that the watch-cases so manufactured and marked by the defendants as aforesaid in violation of your orator's rights are intended by the defendants to be sold in foreign countries and are, in fact, exported to and sold in foreign countries; that your orator in its business aforesaid has been greatly damaged and injured by such wrongful use of its trade-mark by the said defendants, and that if the same shall continue it will work to your orator irreparable damage and injury, in and about its business aforesaid.

7. Your orator further informs your honors that it has noti-
36 fied the said defendants of its exclusive right to said trade-mark and of their wrongful infringement of the same as aforesaid, and has requested them to desist therefrom, but that the said defendants have declined and refused, and still decline and refuse to desist from their unlawful appropriation of your orator's said trade-mark, and threaten to continue the same.

All of which actings and doings are contrary to equity and good conscience and tend to the manifest wrong and injury of your orator in the premises.

In consideration whereof, and forasmuch as your orator is remediless at common law, and can have adequate relief only in this honorable court, where most matters of this sort are properly cog-

nizable and relievable; to the end, therefore, that the defendants may, if they can, show why your orator may not have the relief hereby prayed and may, according to the best and utmost of
37 their knowledge, remembrance, information and belief, full, true, direct and perfect answer make to all and singular the premises and may be compelled by decree of this court to pay to your orator the damages occasioned to it by the defendant's said unlawful infringement of said trade-mark, and to pay the costs of this suit, and to desist from further infringing your orator's rights in the premises. May it please your Honors, the premises being considered, to grant unto your orator writ or writs of injunction under the seal of this Honorable Court, and, according to law, perpetually enjoining and restraining the defendants, to-wit, the Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, their clerks, attorneys, agents and workmen, from directly or indirectly making or selling any watch-case or watch-cases marked with your orator's said trade-mark, and from using your orator's said trade-mark in any way upon watches or watch-cases or in the defendants' printed advertisements, circulars, labels, or the
38 boxes or packages in which their said watch-cases are put up or exposed for sale; and that your orator may have such other and further relief in the premises as the nature of the case may require and to your honors shall seem meet.

Amended A filed A

And may it please your Honors, to grant unto your orator a writ or writs of subpœna of the United States of America, directed to the said defendants, the Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham according to law, commanding them and each of them, on a certain day and under a certain penalty therein to be mentioned, to be and appear in this Honorable Court, then and there to answer all and singular the premises, and to stand to, perform and abide such further order direction and decree as may be made against them.

And your orator as in duty bound will ever pray, etc.

PRINDLE AND RUSSELL,
Solicitors for Complainant.

39 LYSANDER HILL,
Of Counsel for Complainant.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK, }

THOMAS M. AVERY being duly sworn, deposes and says that he is the President of the Elgin National Watch Company, the complainant in the foregoing bill of complaint; that he has read the

Bill, 1898. same and knows the contents thereof; that the same is true of his own knowledge, except in those matters therein stated to be on information and belief, and as to those matters he believes it to be true.

THOMAS M. AVERY.

Subscribed and sworn to before me this 27th day of April, 1898.

D. WILEY MCCAUGHEY,
Notary Public

[SEAL.]

(Endorsed) Filed April 27, 1898. S. W. Burnham, Clerk.

40 On the same day to-wit: the twenty seventh day of April, 1898, in the December term of said court 1897, in the record of proceedings thereof in said entitled case before the Hon. John W. Showalter, Circuit Judge appears the following entry to-wit:

pril

DECREE OF APRIL 27, 1898.

Elgin National Watch Company,
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham. } 23974.

This cause having come on to be heard upon the pleadings and proofs, and been fully argued by counsel for the complainant and the defendants, respectively, and taken under advisement by the court, and the court being now fully advised in the premises,

41 it is hereby adjudged, ordered and decreed, that the word "Elgin" as used by the complainant on watches manufactured and sold by it, is a lawful trade-mark therefor, that the complainant is the owner of said trade-mark, and is entitled to the exclusive use thereof as a trade-mark for watches and the parts entering into the construction of watches, that the complainant, having acquired the common law title to the exclusive use of said trade-mark for watches, by its appropriation thereof in the month of January, 1865, and its continual use of the same from that time to the 19th day of July, A. D. 1892, to distinguish watches of its manufacture from all other watches, and having used said trade-mark on its watches sold in this country and on its watches sold in foreign countries and to the Indian tribes, and having in all respects complied with the requirements of the Act of Congress for the regis-

tration of trade.marks, did on said 19th day day of July, A. Decr
92 D. 1892, duly register said trade-mark in accordance with the 27,
provisions of said Act and has ever since continued the use of
he same upon watches of its manufacture, that, after the registra-
ion thereof as aforesaid and before the commencement of this suit
he defendants, without the consent or allowance of the complain-
nt, used the word "Elgin" as a trade-mark upon watch-cases
nanufactured by them in this country for sale in this and foreign
ountries and which were actually sold both in the United States
nd in foreign countries sometimes using said word in combination
vith other words such as "Elgin Commander," "Elgin Tiger,"
nd "Elgin Giant"; and that in the years 1893 and 1894, the de-
endant, Illinois Watch Case Company registered the words "Elgin
Tiger" and "Elgin Giant" as its trade-marks for watch-cases.

It is further adjudged, ordered and decreed, that the use of said
43 word "Elgin" by the defendants as aforesaid, whether alone
or in connection with other words as aforesaid was a violation
nd infringement of the complainant's exclusive rights in the prem-
ses that an injunction issue forthwith permanently enjoining and
estraining the defendants, Illinois Watch Case Company, Thomas
W. Duncan and Myer Abraham, and each of them, their and each
of their agents, servants, workmen, employes, and attorneys, from
lirectly or indirectly making or using the word "Elgin" whether
alone or in connection with other words or devices, upon watches,
watch-cases, or packages containing watches or watch-cases going
into commerce with foreign nations or with the Indian tribes in such
a way as to be liable to cause purchasers or others to mistake said
watches or the watch-movements encased in said watch-cases, for
watches or watch-movements manufactured by the complainant.
44 And the complainant having waived an accounting, it is fur-
ther adjudged, ordered and decreed that the complainant re-
cover from the defendants the costs of this suit, to be taxed by the
clerk, and have execution therefor.

And on the same day, to-wit, the twenty-seventh day of April,
1898, came the defendants in said entitled cause by their solicitors
and filed in the clerk's office of said court a certain motion to amend
the decree, which said motion is in the words and figures follow-
ing, to-wit:

MOTION TO AMEND DECREE.

end
lled

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS.

Elgin National Watch Case Company, *Complainant;*
vs.
Illinois Watch Case Company, Thomas W. Duncan and Meyer Abraham, *Defendants.* } In Equity.

45 Upon the presentation by the complainant of the draft of a final decree to be entered herein, the defendants move that the draft of such decree be so amended as to limit the complainant's trade-mark to use in connection with watch-movements, and not on watches generally that all reference to the use of the trade-mark by the complainant and the defendants to watch-movements or watch-cases sold in the United States of America be eliminated; and that at the end of the enjoining clause there be added a qualification, as follows:

Provided, however, that nothing herein contained shall prevent the defendants, or either of them, from using the word "Elgin" upon their watch-cases, or upon packages containing their watch-cases, to indicate or inform the public that they are manufactured at Elgin, Illinois, and that the defendants' place of busines is Elgin, Illinois, nor to prevent the defendants, or either of them, from using the word "Elgin" upon watch-cases containing watch-
45*a* movements of the plaintiff's manufacture, or which are truly made at Elgin, Illinois, or to prevent the defendants, or either of them, from using the word "Elgin" upon their watch-cases, or upon packages containing their watch-cases to be sold in the United States of America.

The defendants further move that inasmuch as it appears by the evidence that the defendants offered, without suit and before litigation, to do everything which the court now enjoins them from doing, the defendants recover from the complainant the costs of this suit, to be taxed by the Clerk, and have execution therefor.

BANNING & BANNING,
Solicitors for Defendants.

(Endorsed): Filed April 27, 1898. S. W. Burnham, Clerk.

45½ On the same day to-wit: the twenty seventh day of April, 1898, in the December term of said Court, 1897, in the record of proceedings thereof in said entitled cause before the Hon. John W. Showalter, Circuit Judge, appears the following entry to-wit:

ORDER ENTERED APRIL 27, 1898.

Order o Motion Decree, 1898.

Elgin National Watch Company,
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham. } 23974.

The parties being present by their solicitors. The defendants move the Court to amend the decree entered of this date so as to limit the complainant's trade-mark to use in connection with watch-movements, and not on watches generally that all reference to the use of the trade-mark by the complainant and the defendants to watch-movements or watch cases sold in the United States of America be eliminated. The Court after considering said motion and being now fully advised overrules said motion.

46 Afterwards to-wit: on the fourteenth day of May, 1898, came the defendants in said entitled cause by their solicitors and filed in the clerk's office of said court their Petition for Appeal and Assignment of Errors, which said Petition and Assignment of Errors are in words and figures following to-wit:

PETITION FOR APPEAL AND ASSIGNMENT OF ERRORS.

Petitic peal an ment o filed Ma

CIRCUIT COURT OF THE UNITED STATES NORTHERN DISTRICT OF ILLINOIS—NORTHERN DIVISION.

Elgin National Watch Company,
Complainant,
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham,
Defendants. } In Equity. No. 23,974.

And now come the said defendants, by Banning and Banning, their solicitors, and having prayed an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, from the final decree of said Circuit Court entered in this cause on the 27th day

or Ap- of April, 1898, in favor of the complainant for an injunction and
ssign- for costs of suit, respectfully represent, as grounds of appeal and
Errors, as an assignment of error herein, that said Circuit Court erred in
, 1898, the following particulars:

I. In holding that the complainant had a trade-mark in the word or name "Elgin."

47 II. In holding that the defendants in the use of the word "Elgin" as used by them, infringed upon such trade-mark.

III. In holding that the complainant was entitled to protection in the name or word "Elgin" and in giving it protection in the use of such name against the defendants.

IV. In entering a decree in favor of the complainant and in not entering a decree in favor of the defendants and in not dismissing the bill of complaint in this cause for want of equity.

V. In not amending the decree as requested by the defendants in their written motion at the time of the entry of the decree.

VI. In denying the motion of the defendants to have the decree amended as specified in their written motion to that effect.

BANNING AND BANNING,
Solicitors for Defendants.

(Endorsed) Filed May 14, 1898. S. W. Burnham, Clerk.

48 On the same day to-wit: the fourteenth day of May, 1898, i
the December term of said court, 1897, in the record of pro
owing ceedings thereof in said entitled cause before the Hon. John W
ay 14. Showalter Circuit Judge appears the following entry to-wit—

ORDER ALLOWING APPEAL.

Elgin National Watch Company,
vs.
Illinois Watch Case Company, *et al.* } 23,974.

Now come the defendants by their solicitors and present their pe
tition for appeal to the United States Circuit Court of Appeals fo

the Seventh Circuit from the decree entered herein on April 27, 1898, and also file their assignments of error. Ord Appe 1898.

It is ordered by the Court that said appeal be allowed upon the defendants filing a bond in the penal sum of one thousand ($1,000) dollars with security to be approved by the Court.

49 On the same day, to-wit, the fourteenth day of May, 1898, came the defendants in said entitled case as principals, and Max C. Eppenstein as surety and filed in the clerk's office of said Court a certain Appeal Bond, which said Appeal Bond is in words and figures following, to-wit:

APPEAL BOND. Ap filed

Know all men by these presents, That we, Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham as principal and Max C. Eppenstein as sureties, are held and firmly bound unto Elgin National Watch Company in the full and just sum of one thousand dollars to be paid to the said Elgin National Watch Company, its certain attorney, executors, administrators or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents. Sealed with our seals and dated this thirteenth
50 day of May, in the year of our Lord one thousand eight hundred and ninety. Whereas, lately at a session of the United States Circuit Court for the Northern District of Illinois, in a suit depending in said court between Elgin National Watch Company, complainant, and Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, defendants, a decree was rendered against the said Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, and the said Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree in the aforesaid suit, and a citation directed to the said Elgin National Watch Company, citing and admonishing it to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago within days from the date hereof.

51 Now, the condition of the above obligation is such, that if the said Illinois Watch Case Company, Thomas W. Duncan and

ond, 1898. Myer Abraham shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of:
E. EDELSTEIN,
WALLACE JEFFERY.

ILLINOIS WATCH CASE CO.
By T. W. DUNCAN, Prest. (SEAL).
T. W. DUNCAN, (SEAL).
M. ABRAHAM, (SEAL).
M. C. EPPENSTEIN. (SEAL).

Approved by:
JOHN W. SHOWALTER,
Circuit Judge.

This bond is satisfactory.
L. HILL,
Complt's Counsel.

(Endorsed): Filed May 14, 1898. S. W. Burnham, Clerk.

UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

Elgin National Watch Company,
Complainant,
vs.
Illinois Watch Case Company,
Thomas W. Duncan and Myer Abraham,
Defendants.
} In Equity.

Testimony taken in the above-entitled cause this 8th day of December, 1896, by consent, on behalf of the complainant, before me, L. A. Gardiner, Notary Public, at the office of Mr. Lysander Hill, No. 1133 Monadnock Building, Chicago, Ill.

Present: Mr. Lysander Hill and Mr. George S. Prindle, for complainant, and Mr. Ephraim Banning, of Banning & Banning & Sheridan, for defendants.

Adjourned until 2 o'clock P. M.

Two o'clock P. M., September 8, '96. Met pursuant to adjournment. Present as before.

Adjourned until 10 o'clock, September 9.

Ten o'clock, September 9, 1896. Met pursuant to adjournment. Present as before.

It is agreed that testimony in this case may be taken orally by question and answer under Equity Rule 67, as amended, and that any notary public not disqualified by interest or relationship may act as examiner in the taking of testimony during the progress of the case.

It is also agreed that the parties will waive certification of printed copies of trade-marks and Patent Office drawings and specifications.

It is also agreed that counsel for each party may, until

the hearing, retain control of the exhibits filed on part of his client, subject to the reasonable inspection of the opposite party and its counsel.

Complainant's counsel offer in evidence a certified copy of the certificate of registration of trade-mark No. 21,462, registered to complainant July 19, 1893, the same being for the trade-mark "Elgin," upon which the complaint is based, the same to be marked in evidence "Complainant's Exhibit Certificate of Trade-Mark."

GEORGE HUNTER, being first duly sworn, deposes and says, in answer to interrogatories propounded by complainant's counsel, as follows:

Q. 1. Please state your name, age, residence and occupation.

A. George Hunter; age, sixty-one years; residence, Elgin, Ill.; occupation, superintendent of the Elgin National Watch Company.

Q. 2. State whether or not you have been connected with the establishment now known as the Elgin National Watch Company from the time of its first commencing business.

A. I have.

Q. 3. Where did it first commence its manufacturing business?

A. At Elgin, Ill.

Q. 4. Has its manufactory been located there ever since?

A. It has.

Q. 5. When did it first commence its manufacturing business at Elgin?

A. January 1st, 1865.

Q. 6. About how large a town was Elgin at that time?

A. I should say between four and five thousand population.

Q. 7. About how large a town is it now?

A. Probably, at the present time, 22,000 population.

Q. 8. What manufactories were there in Elgin when the Elgin Watch Company began to manufacture there?

A. I don't recall anything that could be dignified by the name of manufactories. There was a woolen mill there that carded rolls and made some kind of cloth.

Q. 9. At that time, January 1st, 1865, what was the nearest watch factory to Elgin, Ill., and where were its works located?

A. At Hudson City, New Jersey—the United States Watch Company, Giles, Wales & Co., proprietors.

Q. 10. At the time when the Elgin Watch Company began to manufacture at Elgin, how many watch factories were there in the United States, and what were they?

A. There were only two that were manufacturing watches at that date—the American Watch Company at Waltham, the E. Howard Watch Company at Boston. The United States Watch Company at Hudson City, New Jersey, was not at that time manufacturing. It had organized its company a few months before and were building their plant.

Q. 11. What was the name of your company under which it first began business?

A. The "National Watch Company."

Q. 12. Was that name afterwards changed? If so, to what?

A. It was changed to the "Elgin National Watch Company."

Complainant's counsel offer in evidence a certified copy of the Act of the Legislature of the State of Illinois, approved February 15, 1865, entitled "An

Act to Incorporate 'The National Watch Company,'" the same to be marked "Complainant's Exhibit Act of Incorporation."

Also a certified copy of the proceedings by which the name of said company was changed to "Elgin National Watch Company," on the 12th day of May, 1874, same to be marked "Complainant's Exhibit Change of Corporate Name."

Q. 13. This company, whose original charter and change of name I have put in evidence, is the complainant company in this suit, and the company with which you are connected, is it?

A. It is.

Q. 14. Please give the court an idea of how successfully the business of that company was carried on, how extensive it became, and how it grew from year to year, until the present year.

A. It grew from small beginnings at the first issue of watches in 1866 up to a product of 2,100 watch-movements per day in the year 1892. My opinion is that we have produced the largest product of any watch company in the world.

Q. 15. By what name did the watches made by your company become known?

A. As "Elgin Watches."

Q. 16. How generally did they become known to the world as Elgin watches?

A. Wherever they became known at all.

Q. 17. What has been the reputation of the watch-movements of your company throughout its manufacturing history?

A. I should say as good as the best.

Q. 18. State whether or not your company has al-

ways made great effort to build up and maintain a high reputation for the quality of its goods and the uprightness of its dealings.

A. I am more familiar with the first part of the question—its constant aim has been to maintain the quality of its products. I have never heard any aspersions on its uprightness.

Q. 19. State whether or not upon the watch-movements which your company manufactures you place the word "Elgin."

A. On all the watch-movements the word "Elgin" appears.

Q. 20. For how long a time has your company been in the habit of placing the word "Elgin" upon its movements?

A. From the time the first movement was produced.

Q. 20. When your company began using the word "Elgin" on its watch-movements, was any other watch-manufacturing, case-manufacturing or movement-manufacturing concern using the word "Elgin" on watches, watch-movements or watch-cases?

A. Not to my knowledge—I never heard of any.

Q. 21. Where is the principal office of your company located?

A. At 76 Monroe street, Chicago.

Q. 22. Was it always in Chicago?

A. It was.

Q. 23. Is the full style of your company "Elgin National Watch Company of Chicago"?

A. The full style, as I understand it, is "The Elgin National Watch Company of Chicago."

Q. 24. Where are the works of the defendant, the "Illinois Watch Case Company," located?

A. At Elgin, Illinois.

Q. 25. How long have they been there?

A. From memory, I should say about six years.

Q. 26. Is their manufactory a large one or not?

A. It is not a large one.

Q. 27. I show you a photograph, and ask if you recognize it as a picture of the factory building of the Illinois Watch Case Company at Elgin, Illinois?

A. Yes, sir; I think it shows that company's building. The Illinois Watch Case Company has been manufacturing bicycles also. I don't know whether it is the same company, but it is the same management, and its business is conducted in an extension of the same building.

Q. 28. Please mark on the photograph the point of division between the watch-case factory and the bicycle factory, and explain which part of the building is occupied by each.

A. The line of division is the fire-wall shown in the picture and which I have marked "X." To the left of the point "X" is the watch-case factory, and to the right of the point "X" is the bicycle factory.

Complainant's counsel offer said photograph in evidence, to be marked "Complainant's Exhibit Photograph of Works of Illinois Watch Case Company."

Q. 29. How has your company been accustomed to mark the word "Elgin" upon its watch-movements?

A. Engraved on the plates, or painted on the dial, or both.

Cross-Examination by Mr. Banning.

X Q. 30. How long have you been superintendent of the Elgin National Watch Company?

A. Since May, '71.

X Q. 31. What was your position before that time?

A. I was superintendent of machinery.

X Q. 32. Were you a stockholder or officer in the company at the time it first started business, or have you been since that time?

A. I was not a stockholder or officer at the start. I was an employé of the company, as I stated—superintendent of the machinery.

X Q. 33. I suppose the company located its works at Elgin because it considered it a good place to manufacture; is this correct?

By defendants' counsel: Objected to as calling for a mere opinion—witness not being an officer of the company at the time.

A. I don't know what the specific reasons were for locating there.

X Q. 34. Have you ever heard of any other reason?

By Mr. Hill: Objected to as calling for hearsay.

A. I understood at the time that it was conditioned upon the subscription by the citizens of Elgin of a certain amount of capital stock and the donation of a certain amount of land.

X Q. 35. As a matter of fact, you have found Elgin, Ill., a very satisfactory place for your factory, have you not?

A. Well, I should say we largely made it so. It has been satisfactory.

X Q. 36. The Elgin National Watch Company is engaged in the manufacture of watch-movements, and always has been; is this correct?

A. It is correct.

X Q. 37. Has it ever manufactured other parts of watches than the movements?

A. No.

X Q. 38. Have any of your watch-movements ever been marked with the word "Elgin," except in connection with other words, the whole reading "Elgin National Watch Co." or "Elgin National Watch Co., Elgin, Ill."?

A. No; they have not, on the plates; we mark simply "Elgin" on the dials.

X Q. 39. The dial of my watch here present contains the words "Elgin National Watch Co." and the dial on your own watch just shown me contains the same words. Do you mean by the last part of your preceding answer that it has been customary for the Elgin National Watch Company to mark the dials in any other way than as shown in your watch and mine here present?

A. I mean that they mark the word "Elgin" on the watch-dials very largely. The mark on your watch-dial and mine is practically discarded.

X Q. 40. How long since has this change been made from the words on the dial of your watch and mine to the single word "Elgin" on the dials?

A. About a year.

X Q. 41. Before that time the other words used on the dials of your watch and mine were the only ones used on the dials. Is this correct?

A. I mean to be understood that the words "Elgin National Watch Co." on the dials has been discarded—not that it has never been used. The word "Elgin" alone has always been used on the dial of a part of the product, notably on 6 and 0 sizes, on which it has always been used.

X Q. 42. How long have you been manufacturing these 6 and 0 sizes?

A. From memory I should say the 6 size was introduced in '77; the 0 size two or three years later.

X Q. 43. The dials of most of your company's

watches, however, are marked with the words shown on the dials of your watch and mine, are they not?

A. Yes, they are.

X Q. 44. And that always has been the case, has it not?

A. Yes.

X Q. 45. Do you consider the word "Elgin" alone to be the same as the words "Elgin National Watch Co." when used on the dials of watches?

By defendants' counsel: Objected to as incompetent.

A. I consider it more effective.

X Q. 46. By this I understand you to mean that you consider the word "Elgin" to be materially different from the words "Elgin National Watch Co." Is this correct?

By defendants' counsel: Objected to as incompetent.

X Q. 47. What means an "Elgin watch"?

A. The word "Elgin" when it appears on a watch, or in connection with a watch.

Re-Direct Examination by Defendants' Counsel, de bene esse.

R-D-Q. 48. In the last cross-interrogatory you were asked "What means an Elgin watch?" to which you answered, "The word 'Elgin' when it appears on a watch." When the words "Elgin National Watch Company" appear on a watch, do they or do they not mean the same thing as the word "Elgin" does when it alone appears on the dial?

A. I should say they do mean the same thing. The word "Elgin" or "Elgin National Watch Company" mean that the watch was manufactured by the Elgin Na-

tional Watch Company. It would be so understood, and it means all that the reputation of that company implies.

By Mr Banning: In accordance with the understanding I have had with complainant's counsel that objections could be noted at the end of the deposition with the same force and effect as if noted after each question or answer, I now object to the foregoing deposition and each and every question and answer thereof as immaterial, irrelevant and incompetent.

George Hunter.

Sworn to and subscribed before me this 10th day of September, 1896.

L. A. Gardiner,
Notary Public.

[seal.]

JOHN M. CUTTER, being first duly sworn, deposes as follows, in answer to interrogatories propounded by complainant's counsel:

Q. 49. Please state your name, age, residence and occupation.

A. Name, John M. Cutter; age, forty-three; residence, Chicago, Ill.; occupation, general agent of the Elgin National Watch Company.

Q. 50. What duties are comprised within the scope your official capacity as general agent?

A. General supervision of the commercial part of the business.

Q. 51. How long have you been in the employ of the Elgin National Watch Company?

A. Since December 11, 1876.

Q. 52. How long have you been its general agent?

A. Since May 1st, 1884.

Q. 53. What positions did you hold before May 1st, 1884?

A. My time was occupied in rewriting and adjusting our foreign business, and the rewriting, practically, the history of the company up to the time of the fire, in '71, and other clerical duties between the factory at Elgin and the general offices in Chicago.

Q. 54. Has the company a large foreign trade in its movements?

A. It has a considerable foreign trade.

Q. 55. Has it always had, since you have been connected with it, considerable foreign trade?

A. It has.

Q. 56. How widely in foreign countries is this trade diffused?

A. To every civilized country whose inhabitants carry watches.

Q. 57. What have you to say of the extent of your trade in this country?

A. Elgin watches are sold in every section of the United States.

Q. 58. You speak of the watches of your company as "Elgin watches;" why do you use that term?

A. They have always been extensively advertised as "Elgin watches," and we have used the expression ever since I have been connected with the company.

Q. 59. By what name are your watches known the world over?

A. They are known as "Elgin watches."

Q. 60. And yet your company, if I understand the matter correctly, is a Chicago company?

A. Yes, sir.

Q. 61. The defendants take the position that the word "Elgin" is used in connection with your watch-move-

ment to indicate the geographical location where the movements are made, and to inform the public of the site of your manufactory; what have you to say about that?

A. The fact that the factory is located at Elgin is but very little known among the general public. Our immediate trade, known as the "jewelery trade," are, in the main, aware that the Elgin watch factory is located at Elgin. I have been asked repeatedly since my connection with the Elgin Company, "Where is your factory located?" In advising them "at Elgin" they would want to know where that place was. This inquiry has been made by people familiar with the name "Elgin watches."

Q. 62. Would you or would you not say that in its relation to your watches or watch-movements the name "Elgin," as the name of your movement, has ceased to have much, if any, geographical significance, and has become the mere trade-name of your watches?

A. I should say that with the public the name "Elgin watches" never had any geographical significance, but was wholly known to them as the name of the watch.

Q. 63. What is the reputation in the trade and with the public of the watch-movements made by your company?

A. That they have no superior as time-pieces.

Q. 64. Do you know whether or not your company has always made particular efforts to establish and maintain a high reputation for the excellence of its manufactures and for fair dealing with its customers?

A. One of the first requisites of Elgin watches has been quality—a high standard of quality—the highest standard of quality for each different grade of watch-movement manufactured. The company in its commer-

cial relations has always observed strict commercial integrity in all of its dealings with its customers.

Q. 65. State whether or not this reputation for excellence in its product and integrity in its business is now, and has always been since you were connected with the company, of great value to the company and its business.

A. The greatest value conceivable. In fact, had it not been for the most thorough establishment of quality and commercial integrity there would have been no value to the name "Elgin watches."

Q. 66. Does the word "Elgin" appear on the watch-movements manufactured and sold by your company?

A. The word "Elgin" is engraved on the plates or printed on the dial, or both.

Q. 67. On those which enter into foreign trade, as well as those sold at home?

A. On every watch-movement we ever manufactured the word "Elgin" has appeared as above stated.

Q. 68. When customers of retail watch dealers throughout the country or abroad desire to purchase a watch having a movement made by your company, do you know what they are in the habit of inquiring for?

A. They ask for an Elgin watch.

Q. 69. And is that word used throughout the world to distinguish watches containing movements made by your company from all other watches?

A. Yes, sir.

Adjourned until 2 o'clock P. M.

Two o'clock P. M. Met pursuant to adjournment. Present as before.

Q. 70. Has your company ever marked the dials of its watches with the word "Elgin" alone?

A. It has.

Q. 71. How long has it done that?

A. For the past twenty years, to my positive knowledge.

Q. 72. What sizes of watches has it thus marked?

A. 10 size, 8 size, 6 and 0 sizes.

Q. 73. How long has it thus marked these several sizes?

A. The company began marking the dials with the word "Elgin" alone when it first issued the 10 size, which was about twenty years ago. The 8 size followed next, so marked, about the year '77; and the 6 size followed next—possibly three or four years afterward; the 0 size was the last, which we have been manufacturing, I should say, about ten years.

Q. 74. How many different grades of watches has your company been in the habit of manufacturing during the last twenty years?

A. Fully a hundred different grades of movements.

Q. 75. State whether or not during the last twenty years your company has made changes and improvements in the construction of its watch-movement.

A. Yes; a great many.

Q. 76. Have you made any radical changes in their construction during that time?

A. Yes, sir.

Q. 77. About when? And in what did they consist?

A. About the year 1885, and notably the introduction of pendant-set watches.

Q. 78. Through all the changes of construction which have been adopted by the company in its watch-movement, and in all the different grades which they have put out, has the word "Elgin" been used upon them all, and the name "Elgin Watch" been commonly used to designate them all?

A. Yes, sir.

Q. 79. Then the word "Elgin," if I understand your testimony correctly, has not been used to indicate any peculiar construction of watch nor any specific grade of watch, but only to distinguish the watches made by your company from all other watches; am I correct in this?

A. Yes, sir; you are.

Q. 80. Under what name does your company advertise its goods?

A. To the public, always as "Elgin watches."

Q. 81. Can you state, exactly or approximately, what amount of money the company has expended in advertising its goods under this name?

A. I can only state approximately. The company has expended in advertising Elgin watches several hundred thousand dollars.

Q. 82. How many watch-movements has your company manufactured?

A. Very close to seven million.

Q. 83. How many workmen does your company employ when times are normally good?

A. They have employed more than thirty-two hundred at one time.

Q. 84. Do you know how long the defendant, the Illinois Watch Case Company, has been manufacturing watch-cases at Elgin, Illinois?

A. I believe they commenced the manufacture of cases in Elgin in the year 1890.

Q. 85. Were they in business anywhere before that time, and if so, where?

A. Yes, sir; they were manufacturing cases in Chicago prior to that time.

Q. 86. Then about 1890 they moved their manufactory from Chicago to Elgin, did they?

A. Yes, sir.

Q. 87. Before they moved their manufactory from Chicago to Elgin, under what name were they operating and how did they mark their goods or designate them in the market?

A. They were manufacturing under the name of the "Illinois Watch Case Company," and I do not remember that they were selling their cases under specific names. They were sold, as I remember, by the quality—as fourteen karat, ten karat, gold-filled cases—a certificate accompanying each case designating its quality.

Q. 88. State whether or not the defendants, after moving their works to Elgin, made any effort to acquire the use of the name "Elgin" as a part of their corporate name, and if yea, give a history of the transaction.

A. They did. Directly after their moving to Elgin information reached us that they were about to incorporate under the name of the "Elgin Watch Case Company." To prevent the consummation of this, the Elgin Company, through its representatives, immediately applied to the Secretary of State for a license to incorporate the Elgin Watch Case Company, which was granted, and such an organization was completed by us. Immediately following this action an application was made by the defendants to incorporate the "Elgin National Watch Case Company." Such license was granted, and upon public notice of such incorporation we proceeded immediately to contest their right to such name on the grounds of simulating our name; and a decision was finally granted permanently restraining the defendants from using the name "Elgin National Watch Case Company," since which time they have been operating under their old name as used in Chicago—the "Illinois Watch Case Company."

Q. 89. By what court was that injunction granted?

A. By the Circuit Court of Cook County, Illinois, in 1892, Judge Horton presiding.

Complainant's counsel give notice that they will file a certified copy of Judge Horton's opinion in that case in evidence here.

Q. 90. After the defendants were enjoined from using the name "The Elgin National Watch Case Company," as you have stated, what, if anything, did they then proceed to do in order to profit by the use of the word "Elgin" in connection with their watch-cases?

A. At or about that time they adopted the trade-marks "Elgin Commander," "Elgin Giant" and "Elgin Tiger." These trade-marks were at first only printed upon certificates which accompanied each case; afterwards the trade-marks were in various manner stamped upon the cases. In watch-case No. 96,052 made by the defendant, the Illinois Watch Case Company, is stamped on the back "Elgin Commander," underneath appearing the numbers as above. On the inside of the cap of the case is stamped "Guaranteed Elgin 14 K 20 years," over the number as above. In addition to this there is a certificate bearing the above number, 96,052, which contains their registered trade-mark, "Elgin Commander." Another instance is in a watch-case manufactured by the defendant, the Illinois Watch Case Company, stamped on the inside of the cap of the case "Elgin," over the outline of a tiger; underneath, the word "Tiger" over the number of the case, 72,470. Accompanying this case is a certificate bearing the number 72,470 and their trade-mark, "Elgin Tiger."

Q. 91. Please state where these two watch-cases to which you referred in your last answer were obtained, and by whom.

A. They were purchased, at my direction, from M. C. Eppenstein & Co., Champlain building, Chicago.

Q. 92. Is Mr. Eppenstein one of the defendants to this suit?

A. Yes, sir.

Q. 93. What relation does he hold to the defendant company, the Illinois Watch Case Company?

A. I understand he is president of that company.

Q. 94. Is he also a dealer in watch-cases?

A. Yes, sir. The firm of M. C. Eppenstein & Co. are known as jobbers in watch-cases, watch-movements and jewelry merchandise.

Q. 95. Where do they do business?

A. Their place of business is the Champlain Building, Chicago. I had understood that Mr. Eppenstein was president of the Illinois Watch Case Company, but it may be I am mistaken. He was a defendant in the case of the state court to which I have referred, and I have supposed that he was a defendant here, but I am informed that he is not. I am positive, however, that he is prominently identified with the Illinois Watch Case Company as a stockholder, and probably a director.

Complainant's counsel offer in evidence the two watch-cases referred to by the witness in his answer to question 42—the one to be marked "Complainant's Exhibit Defendants' Elgin Commander Watch-Case," the other to be marked "Complainant's Exhibit Defendants' Elgin Tiger Watch-Case."

Complainant's counsel also offer in evidence three trade-mark certificates printed by the United States Patent Office, being the certificates of registration of the defendants' trade-marks "Elgin Commander," "Elgin Tiger" and "Elgin Giant," to be marked,

respectively, "Complainant's Exhibit Defendants' Elgin Commander Trade-Mark," "Complainant's Exhibit Defendants' Elgin Tiger Trade-Mark," and "Complainant's Exhibit Defendants' Elgin Giant Trade-Mark." These several certificates contain the statement and declaration required by the statutes, but the certification thereof is waived by the defendants' counsel.

Q. 96. Inasmuch as your company is not manufacturing watch-cases, will you state to the court what injury results to your business, and why, from the defendants' use of the word "Elgin" in connection with their watch-cases, as you have testified?

A. The injury arises from the fact that the public do not distinguish a watch-case from a watch-movement, but the article in their hands is a "watch," and the marks in the case would convey the character of watch they possess. The public have never been advised, through advertisement, other than that Elgin watches were offered them, and we are accredited with manufacturing the complete watch. There have been misrepresentations made to the public and watches have been offered as Elgin watches, of which neither the case or the movement were ever manufactured in our factory. The possibilities of misrepresentation are almost without limit in consequence of watch-cases being marked as shown in the exhibits here.

Q. 97. These cases made by the defendants, if I understand the matter correctly, are adapted to receive and contain watch-movements of different kinds and qualities, made by many different manufacturers. Am I correct in this?

A. Yes, sir. The different watch-movement manu-

facturers and the different watch-case manufacturers have adopted conventional sized movements and cases; as, for instance, an 18-size movement would fit properly in an 18-size case, and so on, through all the different sized movements and cases manufactured.

Q. 98. In such case, what is to prevent any roguish dealer from putting into one of the defendants' Elgin Commander, Elgin Tiger or Elgin Giant cases a very inferior movement made by some other company than your own, and palming the whole off upon an unsuspecting public through the use of the word "Elgin" on the case?

A. There is nothing to prevent this being done; in fact, it has been done; and Elgin Tiger watches and Elgin Giant watches have been advertised for sale as "Elgin Watches." I refer to such a sale as advertised by Bloomingdale Brothers, of New York, in the Evening Sun, of New York City, of December 3d, 1895. In their advertisement, on page 7 of that paper, they advertise "Sale of Elgin Watches," and offer "gold-filled Elgin Tiger Watches and gold-filled Elgin Giant Watches."

Q. 99. If you have a copy of that paper here, will you please produce it and put it in evidence?

A. I have a copy here, and produce it and put it in evidence. The advertisement in question commences at the top of the fifth column on page 7 of the paper.

Complainant's counsel offer said paper in evidence, to be marked "Complainant's Exhibit Bloomingdale Advertisement."

The part of the advertisement in question which relates to watches is as follows:

"A CHANCE IN GOLD WATCHES. We offer until sold 5-jeweled solid gold watches with Waltham or Elgin movements in a variety of designs. They are

all hunting case stem-winders and setters, and warranted perfect time-keepers. Value from $50.00 to $65.00; our special price, $21.98, $23.50, $29.00, $31.50 and $39.00 each.

"SALE OF ELGIN WATCHES.

"Gold-filled Elgin Tiger Watches, ladies' or gentlemen's size, with 7-jeweled nickel-plated American movements, warranted for 5 years, value $12.00; special $6.98.

"Gold Filled Elgin Giant Watches, ladies' or gentlemen's size, with 7-jeweled nickel-plated American movements, warranted for 20 years. Value 20.00; 9.98."

Q. 100. Does your company, or the American Waltham Watch Company, make any five-jeweled movements?

A. No, sir; they never have.

Q. 101. Did you make any efforts to ascertain what kind of watches the Bloomingdales were selling as "Elgin Watches," under this advertisement of the New York Evening Sun of December 3, 1895?

A. Yes, sir; I immediately directed that a watch be purchased from the Bloomingdale Brothers, as advertised, and obtained an "Elgin Tiger Case" containing a New York Standard movement, the movement being a very much inferior grade, both as regards price and quality, to the lowest grade of movement which we manufacture.

Q. 102. What effect would the sale of such watches as that under the name of "Elgin Watches" naturally and inevitably have upon the reputation and business of your company?

A. The greatest possible injury would result, and if permitted to continue would ruin the reputation of the Elgin Watch Company.

Q. 103. How are watches graded?

A. According to the jeweling. The greater the num-

ber the higher the grade. The smallest number of jewels that we put in a movement is seven, and the highest is twenty-one.

Adjourned until September 10th, 11 A. M.

September 10, 11 o'clock A. M. Met pursuant to adjournment. Present as before.

Q. 104. State whether or not other instances have come to your notice in which deceptions have been practiced upon the public, inducing them to buy other movements than yours with the belief that they are buying your movement, and in which these defendants' watch-cases have figured as an instrumentality of the deception; and if yea, give an account of some such instances.

A. We have a case in point which came to our notice in the ordinary course of business, the transaction having occurred in Australia. On May 15th, 1896, we received a letter from Donald Manson & Co., who have acted for us as agents for Australia from 1886 up to within two years, since which time they have advised us on matters of mutual interest in relation to the Elgin watch business in Australia. I here produce the letter, and a copy of it is as follows:

"DONALD MANSON & CO.
"GENERAL AGENTS AMERICAN ELGIN NATIONAL WATCH COMPANY,
"Elgin, Illinois, U. S. A.
"ELGIN BUILDING.
"Cable Address, WYNYARD SQUARE.
"'DONMANSON.'

"SYDNEY, May 15, 1896.

"ELGIN NATIONAL WATCH COMPANY,
"Chicago.

"*Dear Sirs:* Under date of May 11th we wrote, advising that there were a number of Amn. drummers scouring the country with spurious watches; selling filled gold cases as gold watches with Elgin and Waltham

mov'ts. The party referred to particularly in the adv't. was one Davis, representing Eppenstein & Co., Chicago, who had an announcement in the papers of a sale by auction of the largest consignment of Elgin and Waltham watches ever offered to the Australian colonies. With this we enclose the advt. and also the receipt for two watches which were purchased by Mr. Alcock, and invoiced as 14 K Elgin Commander Warranted. This case was a filled one, and having been sold as a gold watch the vendor was liable to arrest and imprisonment in the jails of this country for a period of not less than seven years hard labor for obtaining money under false pretenses. Davis having heard that the police were after him wisely decamped and sailed on Monday last, 11th May, bound for S. F. We examined the watches carefully and found that not only did Davis sell bogus cases as gold, but also sold in those bogus cases watch mvts. which were base imitations of your mvts. and also the Waltham.

"We, on reading the notice in the papers, at once took steps to have an injunction granted to restrain this man selling watches with your trade-mark 'Elgin, Ill.' stamped in the case. This fraud was intended to palm off on the public watches supposed to be made by your company, and thus rob you of your good name and reputation. On a perusal of the advt. referred to you will be able to see at a glance how misleading and absolutely untrue was this advt.

"We at once went to the newspaper who had inserted this notice of sale and cautioned them that we would at once proceed against them if the notice was again printed. However, after we gave notice to the proprietors they declined to insert the advt. and our advt. appearing on the day of the sale, the whole matter was ended, and the sale postponed. The result was that, as hereinbefore stated, 'Davis' cleared the country for other parts. We presume it is to S. F. There is one matter very certain, that if he had remained here one day longer both he and his spurious stock would have been confiscated by the customs and his body imprisoned in Darlinghurst.

"This party, Davis, called on Mr. Alcock and showed him a watch which had evidently been engraved in Sydney and bore the following inscription: 'Presented to E. Davis, Esqr., by the Elgin National Watch Co.'

This, too, was a fraud. But we presume that his having learned that the police were after him thought that the best thing he could do was to endeavor to make out that he was selling genuine 'Elgin watches.' He stated to Mr. Alcock that this watch was given him as recognition for the great success he had made in selling in the Australian colonies over 4,000 watches. Mr. Alcock replied that if he had sold that number of watches for him he, Mr. A., would have given him the whole 'shop'. The presentation watch referred to was a filled case with a Waltham movt. and stamped 'Elgin Commander, warranted 14 K'.

"This watch, as you will see from a copy of the invoice to Mr. A., was sold at under $20.00. So that you can see that if it had been a 14 K case the lowest wholesale price in America would have been about $45.00 net, as the case weighed over 40 dwts.

"There never has been attempted in this country a bigger swindle than the one herein referred to and the whole onus of the swindle has been put down to the 'Elgin National Watch Co.' and the 'Waltham W. W. Co.'

"Your trade-mark is particularly known as 'Elgin' and any watch, clock or other horological instrument bearing any part of the trade-mark is an infringement and you are entitled to proceed against any one using your trade-mark in any way. We have expended more than double the amount of your allowance to us in advertising your watches, and it now seems a very 'cold day' when such imposters come out here to ruin the trade.

"We have a recollection that you made to us an intimation that certain jobbers from America would very likely visit Australia in the near future. Well, we have to report that they have done so, and to whose loss have they come? Certainly to ours and your own. These drummers have ruined the trade; they have simply killed the sale for 'Elgin' and 'Waltham' 'watches' and have dragged down the good fame of these companies to the ground and in the mire. There never could have been a more shameful attempt to ruin the reputation for American watches than that which has been perpetrated

on the public by Amn. jobbers 'in watch cases and watch movts.'

"All English and Swiss watches are sold for what their intrinsic value is, as stamped on cases, but imagine a watch with 'Elgin' or 'Waltham' movt. sold for a *gold watch*, whereas they are only 'filled cases' and *not gold*. The watches referred to as having been sold for gold watches of 14 K standard would not assay more than 3 karat gold, if that, when melted up.

"We consider that Eppenstein & Co. have done you a very serious injury and that they will in the end ruin the good name we have so strenuously worked to build up.

"Surely you must have been aware of the fact that this firm were selling bogus cases with your trade-mark. We remember having heard from you some time ago that there was a watch case company started by Eppenstein & Co. and that you were about to stop them in using the trade-mark 'Elgin,' I.'. . . Your trade-mark, as registered under royal letters-patent is as follows:

"'Elgin National Watch Company, Elgin, Ill.,' U. S. A.' No person can use any one of these words in connection with watches, clocks or other horological instruments. Consequently you are protected in this hemisphere, and if after a perusal of this letter you will continue to supply this concern with watch movts. we think you will be doing the very best act to ruin your trade, not alone in this market but throughout the whole world, outside the U. S.

"The writer hopes to be able to leave for America by the next steamer, June 11th, and will call on you and explain fully the nature of this matter which has engaged our attention for so long a time.

"Something must be done to protect your interests as against unprincipled dealers, who hawk about your movts. in spurious cases. The public and the trade do not know the difference as between a watch movts. and watch case. All they know is that they buy an Elgin or Waltham watch in either gold or silver, and if after having bought a watch purported to be gold, it turns out to be a filled or plated case, the onus of the whole disgrace falls on the Elgin watch. How is it that you could permit this concern to use your good name on a spurious case. 'Elgin Commander Warranted 14 K' is quite

enough to deceive the honest dealer and more particularly the public. In our opinion we consider you have grounds for a very heavy action against the infringement of your trade-mark, and as such infringement has tended to injure and ruin your trade in this country, you could obtain very substantial damages if you choose to proceed in the courts of this country.

"It will scarcely be necessary for you to reply to this as the writer will have left for America before the time necessary for a reply.

"We trust, however, that you will give the matter of our report your careful consideration, so that we may clearly understand the position. We also desire to add that we have been put to an outlay of over £50, 0, 0 in this matter, and we think that you should in some way reimburse us for the amount of cost incurred in protecting your name.

Yours faithfully
DONALD MANSON.

The advertisements referred to in the letter were received with the letter, and I have them here present and will offer them in evidence as a part of my answer.

"2000 AMERICAN WALTHAM and
ELGIN WATCHES.
FOR SALE BY AUCTION.

MOST IMPORTANT ANNOUNCEMENT.

To the Wholesale and Retail Jewellery Warehousemen, Country Buyers, Shippers, and Others.

UNRESERVED SALE BY AUCTION.
Under instructions from those concerned.

AT THE ROOMS, 76 PITT STREET,
ON FRIDAY NEXT, MAY 1,
commencing at 11 o'clock sharp, and
continuing throughout the day.

THE LARGEST CONSIGNMENT OF GENUINE
ELGIN NATIONAL WATCH COMPANY
and WALTHAM WATCHES
ever OFFERED in the
AUSTRALIAN COLONIES,
comprising
GENTLEMEN'S and LADIES WATCHES
of
Every Grade manufactured by those two World-renowned Firms,
in
the following well-known Trade Lines:—'The Commander,' 'The Tiger,' 'The Giant,' 'The Grant,' 'The Pride,' 'The Fahys,' 'The Dueber,' 'The Champion,' &c., &c.

The above are manufactured in 10, 14, 15, and 18 carat gold; also in solid gold and gold-filled cases, and jewelled in from 7 to 15 holes,
and
MANY of THEM WITH RAISED DESIGNS (22 CARAT), and ALSO SET with DIAMONDS.
Also
A LARGE ASSORTMENT OF GENT.'S and LADIES' CHAINS, ALBERTS, FOBS, SLEEVELINKS, LOCKETS, &c.
TABLE KNIVES, and DESSERT KNIVES and FORKS, &c., &c.

A. TRAVERSI and Co. have received instructions to conduct the above Important Sale at their Rooms, 76 Pitt-street, on FRIDAY Next, May 1st, commencing at 11 o'clock sharp, and continuing throughout the day.

THE AUCTIONEERS desire to draw the special attention of the Wholesale and Retail Jewellry Warehousemen to this most IMPORTANT SALE, it being one of the Most Valuable Shipments of American Watches ever consigned to this market.

EVERY WATCH being guaranteed genuine and the quality represented."

Above this advertisement the words "Sydney Morning Herald" are written, and below the advertisement the words "April 25th, 1896," both in Mr. Manson's handwriting, with which I am familiar.

Another advertisement contained in the same letter is as follows:

"To the Wholesale and Retail Jewellery Warehousemen, Country Buyers, Shippers, and Others.

UNRESERVED SALE BY AUCTION.

Under instructions from those concerned.

AT THE ROOMS, 76 PITT-STREET.
THIS DAY, FRIDAY, MAY 1,
commencing at 11 o'clock sharp, and continuing throughout the day.

LARGE CONSIGNMENT OF AMERICAN WATCHES,
comprising
GENTLEMEN'S and LADIES' WATCHES
in
the following well-known Trade Lines:—'The Commander,' 'The Tiger,' 'The Giant,' 'The Grant,' 'The Pride,' 'The Fabys,' 'The Dueber,' 'The Champion,' &c., &c.

The above are manufactured in 10, 14, 15, and 18 carat gold; also in solid gold and gold-filled cases and jewelled in from 7 to 15 holes,
and
MANY of THEM WITH RAISED DESIGNS (22 CARAT), and ALSO SET with DIAMONDS.
Also
A LARGE ASSORTMENT of GENT.'s and LADIES' CHAINS, ALBERTS, FOBS, SLEEVELINKS, LOCKETS, &c.
TABLE KNIVES, and DESSERT KNIVES and FORKS, &c., &c.

A. TRAVERSI and Co. have received instructions to conduct the above Important Sale at their Rooms, 76 Pitt-Street, THIS DAY, FRIDAY, May 1st, commencing at 11 o'clock sharp, and continuing throughout the day."

Above the advertisement the words "Sydney Morning Herald" are written, and below the advertisement the words "May 1st, 1896," both in Mr. Manson's handwriting, with which I am familiar.

In addition to the above advertisements Mr. Manson also enclosed a printed copy of his notice to the trade, referred to in his letter. I have a printed copy here with me, and it reads as follows:

"AMERICAN ELGIN NATIONAL WATCH COMPANY.

ELGIN-BUILDING, WYNYARD-SQUARE.

OUR ATTENTION having been called to the Advertisement announcing the 'UNRESERVED SALE' by auction of a 'CONSIGNMENT OF WATCHES,' alleged to be manufactured by the abovenamed Company, we desire to advise the 'Public,' that we, as Agents for the Elgin National Watch Company, are not in any way connected either directly or indirectly with the alleged consignment; and we avail ourselves of this opportunity to inform the 'Public,' that we are in no way connected with the Sale by Auction of 'Elgin Watches,' and do not in any way guarantee the quality, as alleged in the advertisement referred to in the advertising columns of the 'S. M. Herald.'

The 'TRADE LINES' ADVERTISED ARE NOT OF THE MANUFACTURE OF THE ELGIN NATIONAL WATCH COMPANY, nor of the American Waltham Watch Company, and we therefore, on behalf of the Elgin National Watch Company, do not hold ourselves responsible for the quality

or manufacture of the watches which are to be sold by auction this morning.

DONALD MANSON and COMPANY.
SOLE AGENTS FOR THE ELGIN
NATIONAL WATCH COMPANY.
ELGIN-BUILDING. WYNDYARD-SQUARE."

Above this printed notice the words "Sydney Daily Telegraph," and beneath the notice the words "May 1st, 1896," are written in the handwriting of Mr. Manson.

Counsel for defendants objects to the introduction of the foregoing letter and advertisements, and to all other letters and advertisements referred to by the witness, as immaterial, irrelevant and incompetent, the same not being sworn to, the parties not being produced for examination, and no opportunity being given for cross-examination. Counsel also objects to all statements in reference to said letter and advertisements as hearsay, and therefore improper.

Q. 105. In his letter Mr. Manson wrote that he hoped to be able to leave for America by the next steamer, June 11th, and call on you; did he do so?

A. No, sir; not to the best of my knowledge. We received a printed notice, shortly after the receipt of his letter, containing announcement of Mr. Manson's death, which occurred early in June, 1896.

Q. 106. Mr. Manson, as I judge from his letter, evidently supposed that your company was supplying Eppenstein & Co. with watch-movements; what is the fact?

A. We have not supplied Eppenstein & Co. with Elgin movements for several years last past.

Q. 107. Which party took the initiative in discontinuing the trade relations between Eppenstein & Co. and the Elgin National Watch Company?

A. The Elgin National Watch Company.

Complainant's counsel offer in evidence, to be marked "Complainant's Exhibit Manson Letter," the original letter received by Elgin National Watch Company from Donald Manson & Co., bearing date May 15th, 1896, and referred to in the witness' testimony.

Complainant's counsel also offer in evidence, to be marked "Complainant's Exhibit Manson Newspaper Slips," the two advertisements and the notice referred to by the witness, dated respectively April 25th, 1896, and May 1st, 1896.

By defendants' counsel: Same objection as made to answer to Q. 104.

Q. 108. Are this letter and these advertisements and notice, which I have just offered in evidence, the original letter, advertisements and notice received by you from Mr. Manson, as you have testified?

A. They are.

Same objection.

Q. 109. In Mr. Manson's letter he speaks of the man Davis as having left for "S. F.;" what do you understand that to mean?

A. San Francisco.

Q. 110. Do you know what kind of trade M. C. Eppenstein & Co. supply?

A. I have been advised that they supply largely auctioneering trade.

Q. 111. Has any incident recently occurred in your own business serving to illustrate how easily the public may be deceived by the improper use of your name or trade-mark upon the dial or other part of a watch? If so, state the facts.

A. We have an instance in point at the present time.

We have in our office a watch-movement which was manufactured by a Springfield, Illinois, watch company known as the "Illinois Watch Company." Upon the plates appear engraved the jeweler's name and address. The dial on this movement was apparently made by us, and upon which appears the word "Elgin," by a statement from the jeweler was supplied from some house in New York. In appearance, except to those particularly competent to determine by whom manufactured, this watch-movement would be very readily sold to the public as a genuine Elgin watch. This watch-movement came to us for repairs in the ordinary course of business, and we discovered the counterfeit at once. This watch was sent to us as an Elgin watch to be repaired. While the movement was manufactured by the Illinois Watch Company, Illinois, it was made to simulate the appearance of an Elgin watch by affixing our dial to that movement, and it was done by some one fully aware of the ease with which this watch could be sold to the public as a genuine Elgin watch.

By defendants' counsel: Same objection as to Q. 104.

Q. 112. How would the business reputation of your company be affected if a case manufacturer should put upon the market watch-cases of very inferior quality bearing your trade-mark "Elgin"?

A. It is impossible to appreciate the extent that the reputation of the Elgin Company would suffer under such a condition. The reputation as established by the company after more than a quarter of a century of time and labor and very large expenditure of money is its principal asset, as attested to by millions of people who are using Elgin watches because of their reputation as the best time-pieces.

Q. 113. What do you know as to the quality of watch-cases which the defendants make and mark with your trade-mark?

A. Nothing beyond what they claim in their certificate.

Q. 114. In their efforts to get the advantage of your reputation for excellence of workmanship and high character of goods, have the defendants confined themselves to the watch business?

A. No, sir; they have essayed the use of the word "Elgin" in connection with bicycles called "Elgin King" and "Elgin Queen," which I believe they manufacture under the name of "The Elgin Cycle Company."

Q. 115. I have here a printed catalogue of bicycles put out by the Elgin Cycle Company, on the covers of which they advertise the "Elgin Queen" and the "Elgin King," with the picture of a watch between the words "Elgin" and "Queen," and also between the words "Elgin" and "King." Do you understand this to be one of the catalogues put out by that company?

A. I do. At the time this form of advertising their bicycles was first considered in Mr. Eppenstein's office, he asked me what I thought of his idea of advertising that bicycle. I told him at the time that I thought it was using the word "Elgin" in connection with a watch for the purpose of conveying the impression that the Elgin Watch Company were manufacturing bicycles, and that I believed we should hear of it in that way through the trade.

By defendants' counsel: Same objection as to question 104.

Q. 116. Have you since heard of it through the trade?

A. We have. We have had numerous inquiries for

bicycles and bicycle sundries, and the bicycles have been advertised to the public by agents of the Elgin Cycle Company as being made by the Elgin Watch Company.

Q. 117. If you have any such advertisement here, will you please produce it?

A. The following advertisement appeared in the Washington (D. C.) "Evening Star," of Saturday, August 8th, 1896:

> "Good Wheels for Rent, 15c. hour.
>
> ELGIN King / Queen CYCLES.
>
> are up to the top-notch of bicycle perfection. They're the product of the famous Elgin Watch Co.—that means they're best. Catalogue free.
>
> Second-hand wheels in splendid condition for from $10 to $60.
>
> CONN. AVE. CYCLE CO.,
> 1110–1112 Conn. Ave.
> jy29—3m20."

By defendants' counsel: Defendants' counsel objects to this question and answer, and to others relative to the Elgin Cycle Company, as irrelevant, incompetent and immaterial, because the Elgin Cycle Company is not a party to this suit.

Q. 118. If you have in the course of your business received any letters from parties who applied to you with the impression that your company is a manufacturer of bicycles—having received such impression from the proceedings of the defendants—will you please produce some of them and permit the Examiner to copy them upon the record?

A. I have five communications from different states variously requesting quotations on bicycles, Elgin King bicycles and bicycle sundries. These are only a small

portion of those that have been received by the Elgin Company since the Elgin King and Queen bicycles have been on the market. I produce them herewith and hand them to the Examiner to be copied.

By defendants' counsel: Question and answer objected to for the same reason as given to Q. 117.

The Examiner certifies that the following is a copy of the letters referred to:

"MODEL CLOTHING HOUSE,
"Nellis & Hattenbach, Props.
"201, 203 and 205 Summit St., Cor. Jefferson.
"TOLEDO, O., April 27, 1896.

"ELGIN NAT'L WATCH CO.,
"Chicago.

"*Gentlemen:*—Your communication of 4/23 received. In reply we wish to state that the advertising of Bicycles as built by the 'Elgin Watch Co.' was caused by a misunderstanding which has since been rectified. It was the Ills Watch Case Co of Elgin Ills which we intended to quote:

"please accept an apology for same
"and oblige
"NELLIS HATTENBACH."

The above letter bears on its face, stamped in red ink, the following:

"RECEIVED
"Apr 29 1896.
"JNO. M. CUTTER."

"ARNSTINE BROS. & MIER,
"CLEVELAND, O. May 21, 1896.

"ELGIN WATCH CO.—

"*Gentlemen:*—Please let us know what you will furnish us the Elgin King Bicycle for. These we want for our personal use. We may want about 3 gents and 2 or 3 ladies wheels.

"Yours truly,
"ARNSTINE BROS. & MIER.

"Dic. B. V. A."

"Office of
"B. GUYRAL,
"MANUFACTURER'S AGENT, JEWELER,
"and Dealer in SEWING MACHINES.
"RAYNE, La., 5/14th, 1896.

"ELGIN N. W. Co.
"Chicago, Ill.

"*Gents'*, Your favor Recd. & noted also the By Puncture P. tire sample, Thanks, but not a Ill Cat.

"Will y please send me the following Cristals
htg 6 sizes watch thin my One Doz.) Send me the Bill
" 0 " " " " ") and I will covered
" 13 " " " " ") same by return
" 8 " " " " ") mail.

"I praise Ihghely to receive some advertisemun to distribute to people directly, that's hip better on country paper, principally like here who's P. don't knowes how to read & write.

"What is the cheapest of y Bycicle Brand?
"Y v R
"B. GUYRAL.
"have you anything else on hand."

"ST. PAUL, MINN., May 18—96.

"ELGIN WATCH CO.,
"Elgin, Ill.

"*Dear Sir.* Would you please be kind enough to send me an Elgin Bicycle pin. I enclose you ten cents in stamps for same.

"Thanking you for the favor before-hand,
"Yours Truly,
"W. HOPKINS
"121 Sykehart,
"St. Paul
"Minn"

"THE MISSOURI PACIFIC RAILWAY COMPANY.
"St. Louis, Iron Mountain & Southern Railway Co. and
"LEASED, OPERATED & INDEPENDENT LINES.
"Office of District Passenger Agent.

"COKE ALEXANDER
"District Passenger Agent.
"129 E. St. Joe St., Indianapolis, Ind.
"May 22, 1896.

"ELGIN WATCH CO.,
"Elgin, Ills.

"*Gentlemen.* Please find enclosed stamps for reply I have a favor to ask—I am anxious to possess *one* or (two if you are willing) of your Elgin King Bicycle buttons. Your agent here has none and said he thought if I wrote to you, there would be no doubt about my getting one or two.

"Yours Truly,
"MRS. COKE ALEXANDER."

This letter bears stamped in red ink across its face the following:

"May 26 1896
WM: J. KRUEGER."

Complainant's counsel offer in evidence the four letters and postal-card referred to by the witness, to be marked "Complainant's Exhibit Elgin National Watch Company's Bicycle Correspondence."

Also the copy of the Washington, D. C., Evening Star of August 8, 1896, referred to by the witness, to be marked "Complainant's Exhibit Evening Star." Also the copy of the illustrated catalogue of the "Elgin Cycle Company" referred to by the witness, to be marked "Complainant's Exhibit Defendants' Bicycle Catalogue."

Q. 119. What do you know about the identity of the defendant Illinois Watch Case Company with the so-

called "Elgin Cycle Company" which issued the illustrated bicycle catalogue already referred to in evidence?

A. I understand that the Illinois Watch Case Company and the Elgin Cycle Company are one and the same, the Elgin Cycle Company being simply a name adopted by the Illinois Watch Case Company.

Same objection as made to question and answer 117, and because the answer is merely hearsay, and therefore improper.

Q. 120. Recurring to the subject of the fraudulent sale of watches as "Elgin watches," accomplished by the use of your trade-name or trade-mark "Elgin" on the watch-cases of the defendants or of other manufacturers, state whether or not it is an easy or difficult matter for your company to detect all instances of such frauds.

A. It is quite impossible for the Elgin Company to detect such frauds, except as they are brought directly to their attention. The sale of Elgin watches is made over an immense territory, and we do not come in contact with all the distributors of watches, by any manner of means. A very large business could be done without it coming to our knowledge.

Adjourned until 10 o'clock A. M., September 11th.

Ten o'clock, September 11th. Met pursuant to adjournment. Present as before.

Q. 121. In answer to Q. 119 yesterday you stated that you understand that the Illinois Watch Case Company and the Elgin Cycle Company are one and the same, the Elgin Cycle Company being simply a name adopted by the Illinois Watch Case Company; state some of the grounds on which that understanding is based.

A. In addition to common report and conversation on the subject with both Mr. M. C. Eppenstein and Mr.

Thomas W. Duncan on the subject, the Elgin National Watch Company had occasion to address a letter, 4/25/'96, to the Illinois Watch Case Company, Champlain Building, City, of which I submit a copy, which is as follows:

"Factories, Elgin, Ill.
"New York Office, 11 John Street.
"ELGIN NATIONAL WATCH COMPANY,
"General Offices 76 Monroe Street.

"(Copy) CHICAGO, 4/25/96.

"THE ILLINOIS WATCH CASE CO.,
"Champlain Bldg., City.

"*Gentlemen*: The firm of Nellis & Hattenbach of Toledo, Ohio, are selling bicycles manufactured by your Company, and have them advertised in the window as manufactured by the 'Elgin Watch Company.' Other parties in different sections of the country are doing the same thing, and the matter has become of great annoyance to this Company.

"We call your attention to this matter and desire that it be promptly corrected and those selling your bicycles prevented from making use of the name of the Elgin Watch Company as connected in any manner with the manufacture of such articles.

"As business men, the mere knowledge of the facts herein stated ought to be sufficient to cause you to promptly prevent a repetition of the mis-statements.

"Will you kindly advise what steps you will take to relieve us from further annoyance?

"Yours truly,
"ELGIN NATIONAL WATCH CO.
"JNO. M. CUTTER
"Gen'l Agt."

This letter is dated April 25th, 1896. It was mailed to the Illinois Watch Case Company in the ordinary manner. In answer to this letter we received a call from Mr. Thomas W. Duncan, a defendant in this case, who stated orally that he regretted very much that we had been put to any inconvenience through misstatements

as regards the Elgin Watch Company being manufacturers of bicycles; and in addition to giving me a list of their wholesale distributors he promised to communicate with each of their agents and make the situation so clear to them that there would not be a repetition, and that we would be relieved from further trouble on that score.

Complainant's counsel offer in evidence the copy of the letter last referred to by the witness, to be marked "Complainant's Exhibit Elgin Watch Company's Notification to Defendants."

By Mr. Banning: In pursuance of the understanding noted at the end of Mr. Hunter's deposition, I now object to the foregoing questions and answers, and each of them, as immaterial, irrelevant and incompetent; and especially do I object to the introduction of letters and circulars written or issued by parties not produced for examination or opportunity given for cross-examination, and to all statements based thereon or otherwise made from information received from other parties, the same being hearsay and therefore improper. I also object to all testimony with reference to the Elgin Cycle Company or with reference to the manufacture and sale of bicycles, the Elgin Cycle Company not being a party to this suit, and trade-marks on bicycles not being now in litigation.

Cross-Examination by Defendants' Counsel.

X Q. 122. In your duties as general agent of the Elgin National Watch Company are you required to travel over the country or to remain in Chicago?

A. Both travelling and remaining in Chicago when not so employed. For the first five or six years, after being elected to the general agency, I travelled fully one-

half of the time. Since that time my travelling has been principally between New York and Chicago, which would be anywhere from four to a dozen times a year—possibly occupying one-third of the time.

X Q. 123. You have nothing to do with complainant's manufacture of watch-movement, have you?

A. Not so far as the practical manufacture is concerned.

X Q. 124. Do you handle the goods personally, or is your work mainly in reference to looking after agencies, making contracts, etc.?

A. I handle the goods sufficiently to be thoroughly familiar with all the details of the business, in addition to personal contact with our customers.

X Q. 125. I suppose you do not know anything about the Elgin National Watch Company from personal knowledge prior to about the time you first entered its employ, which you say was December 11, 1876. Is this correct?

A. If the rewriting of the history of the company since the time of my connection with the company would give me such knowledge, I have it in that way, as this was the first duty I performed for the company upon entering their service. This was made necessary by reason of the records having passed through the fire in 1871 and was partially destroyed.

X Q. 126. I suppose that rewriting the history of the company was from information which you received from others or from the books, documents or records of the company. Was not this so?

A. It was.

X Q. 127. And the only knowledge you had on the operations of the company before you entered its employ was derived in that way?

A. It was.

X Q. 128. Have you been personally familiar with the work of registering trade-marks by the Elgin National Watch Company?

A. Yes; since my connection with the company.

X Q. 129. Please give a list of the different trade-marks it has registered in which the word "Elgin" was used in any way, since you have been in its employ, either under the old law or under the present law.

Objected to as irrelevant and immaterial.

A. The following is a list of trade-marks containing the word "Elgin:"

"Elgin."
"Elgin Watch Co."
"Elgin, Ills."
"Elgin National Watch Co."
"Lady Elgin."

X Q. 130. The complainant always ships its goods from its factory at Elgin, does it not?

A. The original shipments of the movements are always made from the factory. The goods may be consigned to Chicago or New York or at other points, as is most convenient. Principally the shipments are made from Chicago and New York to our customers. I mean the goods are reshipped from Chicago and New York to our customers. The goods are very seldom, if ever, shipped direct from the factory to any of our customers.

X Q. 131. Does complainant sell to jobbers or directly to the retail trade?

A. To wholesale jobbers exclusively.

X Q. 132. To how many wholesale jobbers does it sell in this country?

A. To about 150 wholesale jobbers, with probably eighty to ninety from our New York office, and the balance from our Chicago office. These jobbers are located prin-

cipally in Boston, New York, Philadelphia, Pittsburgh, Cleveland, Cincinnati, Chicago, St. Louis, San Francisco, Toronto, Ontario, Hamilton, and Montreal, Quebec.

X Q. 133. Are goods often returned for repairs or to be exchanged for other goods?

A. Yes, sir.

X Q. 134. In such case, where are they shipped, to the office or factory, and from what place is the reshipment made?

A. All movements returned for credit are returned to the office from which they were shipped, either New York or Chicago. Repairs, which we term "hospital movements," are either returned to our New York or Chicago office, or the factory, and reshipped to the owners from either our New York or Chicago office.

X Q. 135. Owing to its proximity to Chicago and to the fact that it is located on the Fox River, and for other reasons, Elgin is regarded as one of the best manufacturing points in this section of the country, is it not?

A. It may have been in very recent years; certainly not until very recently.

X Q. 136. Excepting South Chicago, Joliet, and possibly Waukegan, do you know of any other place or places within fifty miles of Chicago that equal it as a manufacturing point?

A. I think Aurora, of this state, is a much larger manufacturing point than Elgin. I am not sufficiently familiar with the localities within a radius of fifty miles to state definitely.

X Q. 137. What goods does complainant sell to the 150 wholesale jobbers referred to in your answer to X Q. 132?

A. All of the watch-movements we manufacture, which

at the present time are fully fifty different grades of movements.

X Q. 138. In one of your answers you state that the complainant has expended several hundred thousand dollars "in advertising Elgin watches." Do you mean by this that complainant has expended such large sums in advertising its watch-movements?

A. No, sir; in advertising "Elgin watches" to the public. We never have advertised in any other way to the public.

X Q. 139. Does complainant manufacture or sell complete watches, the case and movement or all the parts being put together?

A. Not at the present time. We have sold complete watches in times past. This refers to an odd-sized movement that we manufactured some years ago—fully fifteen years ago.

X Q. 140. Then, when you speak of advertising Elgin watches at present, you really mean watch-movements, do you not?

A. No. We mean the complete watch, so far as the public is concerned. They get it in no other form. They wouldn't know what an Elgin movement was were we to advertise it as such, and the company never have advertised "Elgin movements" to the public.

X Q. 141. Do you mean that complainant spends money in advertising other people's goods, or that it simply spends money in advertising its own goods? By that I mean, have the several hundred thousand dollars you refer to been expended in building up a trade in goods manufactured by complainant?

A. We have spent the money for advertising Elgin watches for the purpose of building up our own business. As every movement carries with it a watch-case, we may,

incidentally, have assisted watch-case manufacturers; but we have never particularized in our advertisements as to the character of the manufacturer's make of case.

X Q. 142. As a matter of fact, a "watch" includes both movements and case, does it not?

A. Yes, sir.

X Q. 143. And the word is so understood in the trade and by the public generally, is it not?

A. I believe so. A watch-movement may be serviceable as a time-piece without the watch-case; but the watch-case is of no value except for the bullion it contains and that it carries with it a watch-movement, and for this reason I believe everyone understands a "watch" to mean both movement and case.

X Q. 144. How many watch-case manufacturers are there in this country?

A. Probably forty or fifty watch-case manufacturers.

X Q. 145. How many watch-movement manufacturers are there?

A. Eleven or twelve—and not as many as that operating to-day.

X Q. 145. Are any manufacturers engaged in manufacturing and selling both movements and cases, or, in other words, complete watches?

A. Yes, sir; three or four watch companies.

X Q. 146. In your answer to Qs. 88 and 89 you say that Judge Horton of the Circuit Court of Cook County granted an injunction "permanently restraining the defendants from using the name 'Elgin National Watch Case Company.'" Do you know who the defendants were in the suit before Judge Horton and against whom he granted an injunction?

A. I believe Max C. Eppenstein, Sol Eppenstein and Thomas W. Duncan.

X Q. 147. Who are the defendants in thissuit?

A. The Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham.

X Q. 148. Do you know whether the Illinois Watch Case Company was in any way a party to the suit in the Circuit Court of Cook County?

A. I believe they were.

Adjourned until 1:30 P. M.

1:30 P. M. Met pursuant to adjournment. Present as before.

X Q. 149. I suppose the watch-movements made by complainant are adapted to be used in the different cases manufactured by case manufacturers generally. Is this correct?

A. Yes, sir.

X Q. 150. If an unscrupulous dealer were to make false statements or publish false advertisements about your company's watch-movements, would you consider that the company itself was to blame therefor, especially if it had nothing to do with such statements or advertisements?

Objected to as immaterial and incompetent.

A. While we perhaps could not be held legally responsible of blame for it, the public would accept the statement as a truthful one.

X Q. 151. What part of the public do you refer to, the intelligent public or the ignorant public?

A. That part of the public who desire to purchase Elgin watches.

X Q. 152. How do you know that they would accept the statement as a truthful one?

A. There is no reason to believe that they would look

to any other than the source from which the statement emanated.

X Q. 153. What acquaintance did you have with Donald Manson in his lifetime?

A. A personal acquaintance dating from the month of June, in 1886; I visited him in Australia in '89, and we had regular monthly correspondence during all that time from June, 1886.

X Q. 154. Have complainant's counsel advised you that his *ex parte* statements are good evidence, especially when they are not even sworn to?

A. No, sir.

X Q. 155. Do you know anything personally about the various matters referred to in the letters and advertisements produced in your direct examination except that you have been informed that the statements contained therein were made, and also that the letters were written or advertisements published, as you have stated?

A. The letters were received in the usual course of business, and most of them bear my receiving stamp as having opened the letters in the office, and personally replied to. The advertisements came under my notice in like manner.

X Q. 156. Do you know from your own personal knowledge whether the statements contained in the letters were true or not?

A. We only have the statements made in the letters.

X Q. 157. In question 120 complainant's counsel speak of "the fraudulent sale of watches as Elgin watches," which expression, in substance, he uses in various other places, more, I believe, than you have used it in your answers. Do you know of your own knowledge "of the fraudulent sale of watches as Elgin watches" in any way or at any place?

A. Personally I never purchased watches under such an advertised sale, but directed that a watch should be purchased.

X Q. 158. Referring to your answers to Qs. 119 and 121, do you have any knowledge with reference to the matters therein referred to, except as you have stated?

A. I have information obtained through sources which are well established with all merchants and manufacturers, known as Commercial Agencies.

X Q. 159. In your answer to Q. 121 you say that Mr. Duncan stated that he regretted very much that you had been put to any inconvenience on account of bicycles. Have you ever heard anything further from him or the trade on that subject since that time?

A. With but one exception—which was the advertisement in the Washington Evening Star—I believe we have not.

X Q. 160. Do you know what kind of a bicycle the "Elgin King" and "Elgin Queen," which you say the defendants are manufacturing, are, particularly as to grade, quality, etc.?

A. Nothing beyond their claims and advertisements, and the exhibition of their wheels in show windows.

X Q. 161. Has your company ever manufactured or sold bicycles or similar machinery?

A. No, sir; nor anything pertaining to them.

X Q. 162. Do you think your company has lost the sale of any watch-movements by reason of the defendants' manufacture and sale of bicycles, or by reason of their use of the word "Elgin" in connection therewith?

A. No, sir; but I believe the Illinois Watch Case Company have benefitted very much in the sale of their bicycles through the use of the word "Elgin," as the reputation of the Elgin Company has caused inquiries to

be made of us and statements have been made to the public in advertisements that the quality of the Elgin bicycles could be determined through the excellence of the Elgin Watch Company's own manufacture of watches.

X Q. 163. Then complainant is fighting because defendants are being "benefitted" by the use of the word "Elgin" rather than because it is being damaged by their use thereof. Is this what you mean?

Objected to as containing an erroneous assumption based solely on the bicycle business, and ignoring the watch-case.

A. No; we are fighting to retain what we believe belongs solely to the Elgin National Watch Company, who have made the name valuable.

X Q. 164. And this, whether you are being damaged by the operation of others or not?

Same objection.

A. I believe the Elgin National Watch Company is damaged through the use of our trade-mark when we cannot control the articles of merchandise manufactured under our trade-mark.

X Q. 165. As a matter of fact, there has been a good deal of litigation between complainant and defendants, or some of its officers, during the last few years. Is not this true?

A. It is, ever since the Illinois Watch Case Company moved its factory to Elgin and began the appropriation of names and trade-marks simulating ours.

X Q. 165. And all this litigation has been started by complainant, has it not?

A. It has.

X Q. 166. And its object has been to prevent defendants from using the word "Elgin" in connection with goods of their manufacture?

A. Yes, the word "Elgin" and other combinations with the word "Elgin" in the corporate name of the company and on their goods.

X Q. 167. And you have insisted, in court and out of court, that defendants should discontinue the use of the word "Elgin" entirely in connection with their corporate name, or with the goods of their manufacture?

A. We have.

Re-Direct Examination.

R-D. Q. 168. Has your company ever brought against these defendants, or any of them, any other suit for the purpose of restraining them from using your trade-mark on their manufactured watch-cases, other than the suit in which you are now testifying?

A. No, sir; we have not.

R-D. Q. 169. All your other suits against these defendants, or any of them, including the Eppenstein parties, were brought to prevent them from simulating your corporate name, were they not?

A. They were.

JNO. M. CUTTER.

Sworn to and subscribed before me this 11th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

Adjourned until 10 o'clock, September 12th.

Ten o'clock, September 12, 1896. Met pursuant to adjournment. Present as before.

JULIUS SCHNERING, being duly sworn, deposes and testifies as follows:

Q. 171. Please state your name, age, residence and occupation.

A. Julius Schnering; age, forty-four years; residence, Chicago; occupation, member of the firm of Otto Young & Co., wholesale jewelers.

Q. 172. Is your firm largely engaged in dealing in watches?

A. Quite largely; yes, sir.

Q. 173. How long have you been connected with the watch trade?

A. Twenty-three years.

Q. 174. Are you familiar with the watch-movements made by the Elgin National Watch Company?

A. Yes, sir.

Q. 175. By what name are they generally known in the market?

A. Elgin watches.

Q. 176. When a man comes into your store and enquires for an Elgin watch, what do you understand that he wants?

A. I understand that he wants an Elgin movement.

Q. 177. That is, a movement made by the Elgin National Watch Company?

Objected to as leading.

A. Yes, sir.

Q. 178. I hand you two watch-cases, one marked "Complainant's Exhibit Defendants' Elgin Commander Watch-Case," and one marked "Complainant's Exhibit

Defendants' Elgin Tiger Watch-Case." Please examine them and observe how they are marked on the inside by the manufacturer, and also observe the printed certificate in the inside of the case. After having examined them, please state whether or not, in your opinion, the use of the word "Elgin" on watch-cases, as it is here used in these two exhibits, would be liable to deceive the ordinary purchaser of watches, or could be made use of as an instrumentality for deceiving the ordinary purchaser of watches into buying a watch on the supposition that it was made by the Elgin National Watch Company, when, in fact, the movement contained in the case might be a movement made by some other manufacturer.

Objected to as leading.

A. I think it could be—yes, sir.

Cross-Examination.

X Q. 179. Has your firm been accustomed to sell watches having cases manufactured by the Illinois Watch Case Company?

A. No, sir.

X Q. 180. Has it ever sold such watches?

A. We have never sold those cases—no, sir.

X Q. 181. Is your firm a large customer of complainant, the Elgin National Watch Company?

A. We handle the Elgin watches quite largely.

X Q. 182. What do you mean when you say you handle the Elgin watches? Do you handle the movement merely, or watches containing such movement?

A. We handle both—separately and together. That is, we sell the movements alone and we sell them in cases.

X Q. 183. When you put a movement manufactured by the Elgin National Watch Company into a case manu-

factured by another company, do you then call it an Elgin watch?

A. We generally do—yes, sir. The movement in the case regulates the name of the watch—that is, it does with us; I don't know about others.

X Q. 184. In such case, do you understand that the ordinary purchaser understands that the expression "Elgin watch" includes both a movement and case manufactured by the Elgin National Watch Company?

A. No, sir; speaking for ourselves. We're in the wholesale business.

X Q. 185. Then you do not come in contact with the retail trade at all?

A. Not with the consumer.

JULIUS SCHNERING.

Sworn to and subscribed before me this 12th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

SAMUEL W. DRIPPS, being first duly sworn, deposes and testifies as follows:

Q. 185½. Please state your name, age, residence and occupation.

A. Name, Samuel W. Dripps; age, forty-one; residence, Chicago; occupation, salesman in Benjamin Allen & Co., wholesale jewelers, Chicago.

Q. 186. How long have you been in the jewelry business?

A. Twenty-nine years.

Q. 187. Does your firm handle watches extensively?

A. They do.

Q. 188. Do you handle, among other watches, those

made by the Elgin National Watch Company, of Chicago?

A. We do.

Q. 189. By what name are the watches or watch-movements which are manufactured by the Elgin National Watch Company generally known to the trade throughout the world?

A. They are known as "Elgin watches."

Q. 190. How long have they been known to the trade by that name?

A. Since about 1868.

Q. 191. I show you two watch-cases here in evidence, one of which is marked "Complainant's Exhibit Defendants' Elgin Commander Watch Case," and the other is marked "Complainant's Exhibit Defendants' Elgin Tiger Watch Case." Please observe how those two cases are marked and how the certificates read which are contained in them, and state whether or not, in your opinion, the public are liable to be deceived by the use of the word "Elgin," as found in those marks and certificates, or either of them, into buying, as watches made by the Elgin National Watch Company, watches which were never made by that company but by other manufacturers.

A. I think the public are liable to be deceived into buying a watch for an Elgin watch in that kind of a case, even if the watch-movement itself were made by some other manufacturer.

Cross-Examination by Mr. Banning.

X Q. 191½. As I understand you, the house in which you are employed deal with the wholesale trade exclusively?

A. Yes, sir.

X Q. 192. So you do not come in contact with the retail trade or consumers at all?

A. Not in regard to selling goods to the consumer directly; but I often come in contact with the consumer through our retail customers sending them to us.

X Q. 193. I suppose you have handled the Elgin National Watch Company's goods a great many years, and very extensively?

A. Yes, sir.

X Q. 194. Have you ever personally known of an instance in which a purchaser has been "deceived by the use of the word Elgin . . . into buying, as watches made by the Elgin National Watch Company, watches which were never made by that company, but by other manufacturers"?

A. No, sir.

SAMUEL W. DRIPPS.

Sworn to and subscribed before me this 12th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

Adjourned until 10 o'clock, September 14.

September 14, 10 o'clock A. M. Met pursuant to adjournment. Present, Mr. Thomas A. Banning for defendants; Mr. Lysander Hill and Mr. Geo. S. Prindle for complainant.

Mr. JAMES L. ROWE, being first duly sworn, deposes as follows:

Q. 195. Please state your name, age, residence and occupation.

A. Names, James L. Rowe; age, fifty-six; residence, Chicago; occupation, jeweler.

Q. 196. Are you engaged in the wholesale or retail business?

A. In the retail.

Q. 197. Do you handle watches, watch-cases or watch-movements?

A. We sell them all.

Q. 198. How long have you been engaged in the retail jewelery and watch business?

A. In Chicago, thirty-three years.

Q. 199. Do you handle watch-movements made by the Elgin National Watch Company?

A. I do.

Q. 200. How long have you handled their movements?

A. Ever since the factory started.

Q. 201. Have you ever handled watch-cases made by the Illinois Watch Case Company?

A. Not to my knowledge.

Q. 202. Under what name are watches containing movements made by the Elgin National Watch Company known to the public?

A. "Elgin watches."

Q. 203. How long have they been generally known by that name?

A. As long as I have sold them—as near as I can remember.

Q. 204. Please examine the two watch-case exhibits now shown you, marked, respectively, "Complainant's Exhibit Defendants' Commander Watch-Case" and "Complainant's Exhibit Defendants' Elgin Tiger Watch-Case," especially observing the word "Elgin" stamped or engraved upon the interior of the cases, and state whether or not, in your opinion, the introduction of such watch-cases upon the market would be liable to result in purchasers being deceived into buying watches made by other manufacturers in the belief that they are buying watches made by the Elgin National Watch Company.

By defendants' counsel: Defendants' counsel objects to the question as calling for the mere opinion of the witness instead of calling for facts.

A. It is my opinion that any good salesman can sell the case exhibits with any other movement for an "Elgin watch" as well as with a movement made by the Elgin Company.

Q. 205. Does the ordinary customer distinguish between the movement and the case or does he buy them both together as a "watch"?

A. I should say that the customer buys the two, the movement and case, as a "watch."

Q. 206. How large a proportion of ordinary watch buyers, customers of the retail trade, know the difference between one watch-movement and another?

A. Say one in five.

Cross-Examination by Mr. Banning.

X Q. 207. What do you mean when you speak of "Elgin watches"?

A. Watches made by the "Elgin National Watch Company."

X Q. 208. Where are their watches made?

A. In Elgin, Illinois.

X Q. 209. You say that the ordinary customer does not distinguish between the watch-movement and the case, but buys the whole as a watch. What would such a customer understand, then, when he saw the word "Elgin" on either the watch-case or the watch-movement?

A. He would understand that it was a watch made by the Elgin National Watch Company.

X Q. 210. At Elgin, Illinois?

A. Yes.

X Q. 211. How far do jobbers and retail dealers

understand that watch-cases and watch-movements are distinct things?

Objected to as immaterial.

A. I should say that all of them understand it.

X Q. 212. Could anybody sell you watches in these cases, marked "Complainant's Exhibit Defendants' Elgin Tiger Watch-Case" and "Complainant's Exhibit Defendants' Elgin Commander Watch-Case," on the supposition on your part that you were buying what you have termed "Elgin watches"—the movement in the cases being made by some other concern?

Objected to as immaterial.

A. I am thoroughly conversant with all the trade-marks of the Elgin National Watch Company, and nobody could sell me another movement for an Elgin movement.

X Q. 213. How far are jobbers and retailers, in your judgment, liable to be deceived from the use of cases like these exhibits into buying watch-movements under the belief that they were buying movements made by the Elgin National Watch Company, when, as a matter of fact, they were made by some other concern?

Same objection.

X Q. 214. A jobber or retailer who knew his business wouldn't be deceived.

Re-Direct Examination.

R-D. Q. 214. In answer to X Q. 209 and 210 you say, in substance, that an ordinary customer buying a watch as a whole and seeing the word "Elgin" on either the case or the movement would understand that it was a watch made by the Elgin National Watch Company, at Elgin, Illinois. Do all the ordinary purchasers of watches over the country and in foreign countries know that the

Elgin National Watch Company's manufactory is located at Elgin, Illinois?

A. In my opinion they do.

R-D. Q. 215. But if a purchaser did not know that the manufactory was located at Elgin, Illinois, then would or would not the word "Elgin" on the case or movement indicate anything further to him than that the watch was made by the company which makes watches known as "Elgin" watches?

A. The trade-mark of "Elgin Watches"—I mean the name of "Elgin Watch"—is known all over the world. A case stamped "Elgin" would convey to the average purchaser the impression that that watch was made by the Elgin Company, or was, as people understand it, an "Elgin Watch." The same name stamped on the dial would convey the same impression to the purchaser. I will add to that in my opinion the word "Illinois" doesn't cut any figure.

JAMES L. ROWE.

Sworn to and subscribed before me this 14th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

MR. THOMAS W. DUNCAN, being duly sworn, deposes and testifies as follows:

Q. 216. Please state your name, age, residence and occupation.

A. Name, Thomas W. Duncan; age, thirty-eight; residence, Elgin, Illinois; occupation, president of the Illinois Watch Case Company.

Q. 217. What relation does Mr. Max C. Eppenstein hold to your company?

A. He is a director.

Q. 218. Does your company manufacture bicycles?

A. No, sir.

Q. 219. Has it manufactured bicycles?

A. Bicycles are manufactured by the Elgin Cycle Company.

Q. 220. What is the "Elgin Cycle Company"?

A. It is a corporation.

Q. 221. Who are its officers?

Question objected to as immaterial, irrelevant and incompetent, inasmuch as the Elgin Cycle Company is not a party to this suit, is shown to be a distinct corporation, and is not shown to be manufacturing or selling either watches or watch-cases, and the witness is advised that he can decline to answer questions relating to the private business of that company or its stockholders, directors or officers, if he so desires.

A. Upon advice of counsel, I refuse to answer that question.

Q. 222. If the Elgin Cycle Company is a corporation, the question "Who are its officers" is not a question relating to private business but to a public corporation, and I request you to answer it.

Defendants' counsel suggests that complainant, if they desire to pursue the inquiry, examine the public records and get such information as they may afford.

Complainant's counsel reply that the public records may show who were the incorporators and who were the officers during the first year of the corporate existence, but would not show who the officers were after that time, nor, in case of a resignation, would they even show who all the officers

were during that time. He therefore requests an answer to the question.

A. I still refuse to answer.

Q. 223. When I put that question to you, and before defendants' counsel commenced his objections and instructions, you began your reply to the question with the words "I am its president," did you not?

A. I did.

Q. 224. Now who is its secretary?

Same objection.

A. Upon advice of counsel, I refuse to answer that question.

Q. 225. Are not its officers the same persons who are officers of the Illinois Watch Case Company?

Same objection.

A. Answer refused.

Q. 226. Is not its stock held by the same persons who hold the stock of the Illinois Watch Case Company?

Same objection.

A. Answer refused.

Q. 227. Is not its business carried on in one end of the same building which is occupied by the Illinois Watch Case Company as its manufactory?

A. It is.

Q. 228. Are not all the liabilities of the Elgin Cycle Company on its bicycle factory account contracted in the name of the Illinois Watch Case Company?

Same objection.

A. Answer refused.

Q. 229. Is not the name, the "Elgin Cycle Company," the name of the selling department of the Illinois Watch Case Company's bicycle factory?

Same objection.

A. Answer refused.

Q. 230. In making statements of the assets and liabilities of the Illinois Watch Case Company, have the officers of that company never included among its assets and liabilities the assets and liabilities of the Elgin Bicycle Company?

Same objection.

A. Answer refused.

Q. 232. You say that the Elgin Bicycle Company is an incorporated company. When and where was it incorporated?

Question objected to as not calling for the best evidence, the records themselves being the best evidence.

A. I couldn't answer that question as to date; I can't recall the date.

Q. 233. Where was it incorporated—in Illinois or some other state?

A. In Illinois.

Q. 234. Can you say in what year it was incorporated?

A. In '95.

Q. 235. In what season of the year?

A. I can't tell you the month now.

Q. 236. When was that part of the building built in which the Elgin Cycle Company carries on its manufacture?

A. In '95.

Q. 236. How long did it take to build it?

A. I don't remember.

Q. 238. State as near as you can.

A. About two months.

Q. 239. Was it commenced before or after the incorporation and organization of the Elgin Cycle Company?

A. I don't remember.

Q. 240. Do you remember in what month the building was commenced?

A. I do not.

Q. 241. Was the building commenced by the Illinois Watch Case Company or the Elgin Cycle Company?

A. The building was commenced by the Illinois Watch Case Company.

Q. 242. Who owns the building?

A. The Illinois Watch Case Company.

Q. 243. Who owns the machinery in the building?

A. The Illinois Watch Case Company.

Q. 244. Who pays the mechanics who operate that machinery?

Same objection.

A. Answer refused.

Q. 245. Who buys the raw material that is worked up into bicycles there?

Same objection.

A. Answer refused.

X Q. 246. Mr. Duncan, you were subpœnaed this morning while in this room in attendance upon the examination of a witness called by the complainant in the suit against the Illinois Watch Case Company, yourself and another, were you not?

A. I was.

THOMAS W. DUNCAN.

Sworn to and subscribed before me this 14th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

Two o'clock P. M. Met pursuant to adjournment. Present as before.

MR. JOHN P. OWEN, being first duly sworn, deposes and testifies as follows:

Q. 247. Please state your name, age, residence and occupation.

A. Name, John P. Owen; age, forty; residence, Chicago; occupation, salesman.

Q. 248. With what concern are you employed?

A. M. A. Mead & Co.

Q. 249. What is their business?

A. Wholesale watch dealers.

Q. 250. How long have you been with them?

A. Nine years.

Q. 251. How long have you been in the watch business?

A. Twenty-four years.

Q. 252. Are you familiar with the watch-movements made by the Elgin National Watch Company?

A. Yes, sir.

Q. 253. Does your concern handle a good many of those movements?

A. Yes, sir; they handle a great many of them.

Q. 254. Are there any watch-movements on the market called "nameless movements"?

A. Yes; the majority of movements are nameless.

Q. 255. What is to be understood by "nameless movements"?

A. A "nameless movement" would be a watch that would not bear any distinguishing mark. It would not be sold as a Waltham, an Elgin, nor by what factory manufactured.

Q. 256. No trade-mark or manufacturer's name on it?

A. That's the idea; no trade-mark or manufacturer's name.

Q. 257. Has your concern handled any watch-cases make by the Illinois Watch Case Company?

A. Not that I can recall. It may have sold an odd case or two as an accommodation to some customer—but so few that I couldn't recall.

Q. 258. By what name are watches known in all parts of the world, which contain movements made by the Elgin National Watch Company?

A. They are known as "Elgin watches."

Q. 259. I now show you two watch-cases made by the Illinois Watch Case Company, one of them marked "Complainant's Exhibit Defendants' Elgin Commander Watch-Case" and the other marked "Complainant's Exhibit Defendants' Elgin Tiger Watch-Case." The Illinois Watch Case Company also makes other watch-cases which they mark "Elgin Giant," but I have not one of them here at present. Please examine these watch-cases and observe that the word "Elgin" is marked upon them. Please state whether or not, in your opinion, the use of the word "Elgin" on these watch-cases is liable to cause the purchasing public, or a portion of it, to be deceived into buying watches as "Elgin" watches which are not Elgin watches, but are movements made by some other parties and put into cases like these, bearing the word "Elgin."

A. Yes; I would say that that tended to deceive. A person would think that they were getting a watch manufactured by the Elgin National Watch Company.

Cross-Examination by Mr. Banning.

X Q. 260. Is your business in the wholesale or retail?

A. Wholesale.

X Q. 261. Did you ever personally know of a person being deceived by the use of the word "Elgin" on a watch-case into buying a watch-movement that was made by some other concern than the Elgin National Watch Company?

A. I can't say that I have ever had a case of that kind come directly before me, but I've had people hand me different watch-cases with nameless movements in them, having bought them as this make of watch or that make of watch, when they were imitations.

X Q. 262. What is the difference between a watch-case and a watch-movement?

A. A "watch-movement" is a machine that measures the time; a "watch-case" is the covering for the watch to protect it from dust or damage.

X Q. 263. A watch-case and a watch-movement are separate and distinct articles of manufacture, are they not?

A. To the manufacturer—yes.

X Q. 263½. Do you mean to say that the use of the word "Elgin" on the watch-movement or on the watch-case would cause an ordinary purchaser to understand that the whole thing—the movement and the case—were the manufacture of the Elgin National Watch Company?

A. I should say that a very large percentage of people would consider it an Elgin watch—seventy-five per cent., say. That would be my idea of it.

X Q. 264. You use the term "Elgin watch" in your last answer to include the whole thing, do you?

A. Yes, sir.

X Q. 265. Do you know where the Elgin National Watch Company manufacture their watch-movements?

A. Yes, sir; Elgin, Ill.

X Q. 266. Is not Elgin, Illinois, a town with a very wide reputation as a place where watches are manufactured?

A. Where Elgin watch-movements are manufactured.

X Q. 267. Where complainants manufacture?

A. Of course it is known among all dealers and largely among the public. I should say that there were more people—I might say there are many more people—who have no knowledge of it as a place where watches are manufactured than do.

X Q. 268. Do you make that last statement as a fact within your own knowledge, or how?

A. I simply give that as an opinion. In twenty-five years of experience in this business I find the general public know less about watches and watch-cases than they are credited with knowing.

X Q. 269. That is, than you thought they knew?

A. Yes, sir.

X Q. 270. You have dealt, and are still dealing, largely in complainant's watch-movements; is this so?

A. Yes, sir.

X Q. 271. Did you ever, to a large extent, sell watch-movements made by any other concern?

A. Yes, sir; Waltham watches—I can't say any other movement largely than the Waltham. We have handled other watches, but not in large quantities.

X Q. 272. Do you know where the Illinois Watch Case Company has its factory?

A. I have always understood it was at Elgin, Ill.

X Q. 273. From your experience in the sale of Elgin watch-movements, do you think that any person would

be liable to buy an Elgin bicycle under the supposition that he was buying an Elgin watch?

A. I couldn't conceive of a man as ignorant as that.

Re-Direct Examination.

R-D. Q. 274. You and the dealers and manufacturers clearly distinguish between a watch-case and a watch-movement; how about the ordinary consumer or customer?

A. A greater percentage of the people know the article as a watch—either gold, filled or silver—as a silver watch, a gold watch or a filled watch, as the case may be.

JOHN P. OWEN.

Sworn to and subscribed before me this 14th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

Mr. LEO HETTICH, being first duly sworn, deposes and testifies as follows:

Q. 275. Please state your name, age, residence and occupation.

A. Leo Hettich; age, fifty-six; residence, Chicago; occupation, watch-maker.

Q. 276. Do you deal in watches?

A. Yes, sir.

Q. 277. How long have you been dealing in watches?

A. In business for myself thirteen years—in connection with a partner. Before that, always in watches and jewelry, repairing and dealing in watches—since '52.

Q. 278. Do you handle any watch-movements made by the Elgin National Watch Company?

A. Yes, sir.

Q. 279. How long have you been handling them?

A. Since '67 or '68, along there.

Q. 280. By what name are the watches which contain movements made by the Elgin National Watch Company known all over the civilized world?

A. Elgin watches.

Q. 281. Do you handle any watch-cases made by the Illinois Watch Case Company?

A. No, sir.

Q. 282. Is your business a wholesale or retail?

A. Retail, altogether.

Q. 283. The Illinois Watch Case Company make and sell watch-cases under the name of "Elgin Commander," "Elgin Tiger" and "Elgin Giant." I show you two of those cases, marked, respectively, "Complainant's Exhibit Defendants' Elgin Commander Watch-Case" and "Complainant's Exhibit Defendants' Elgin Tiger Watch-Case." Please examine these two exhibits and observe how the word "Elgin" is used in both of them, engraved or stamped in the case. Please state whether or not watch-cases marked with the word "Elgin," as these exhibits are marked with it, would be liable, in your opinion, to deceive the ordinary watch buyer or user into buying as an Elgin watch a watch whose movement was made by some other party than the Elgin National Watch Company, and was offered for sale in cases like these.

A. I should think it would be likely to deceive a customer, especially if it was in unscrupulous hands, telling them it was an "Elgin" watch. If it had a nameless movement in it there would be no way for a customer who was not posted to tell.

Q. 283. Has any instance ever come to your personal knowledge where a customer has been deceived in that way?

A. Yes, sir; there was a customer of ours bought a watch, I believe, from what is called the "Elgin Watch and Jewelry Company," corner of Madison and La Salle streets, in the basement, that was a filled case—"Elgin" in the case, and a Columbus movement in the case—which he claimed he had purchased as a solid 14-karat gold Elgin watch.

Q. 284. If I understand you correctly, the word "Elgin" was marked in the case?

A. It was, somewhere in the case—I won't be sure where. I know it was a filled case.

Q. 285. You saw the case yourself, did you?

A. I saw the case.

Q. 286. And the watch?

A. And the movement.

Q. 287. The concern that sold that to your customer was the concern which, operating under that name, was run out of town by the police shortly afterwards for fraudulent dealing, was it not?

A. I know they left there, and I know they were sued a number of times—I saw their names in the papers—before justices, for not selling goods as they were represented.

Q. 288. Did you lose the sale of a watch by that fraud?

A. Yes, sir.

Cross-Examination by Mr. Banning.

X Q. 289. How do you know you lost the sale?

A. He was into our store pricing watches, and we gave him the lowest price at which we could sell an Elgin movement and case. He said if he couldn't do better he would come back; and we had sold him other goods before. I didn't see him again until about six months af-

terwards—a year afterwards—I don't remember about the time; it might have been a year afterwards, when he brought a lady's watch in for repair. It had a short plated fob. Knowing he had been in to see about purchasing a watch, when he brought this one in for repair I asked him if that was the watch he had purchased in place of the one he was going to buy from us. He said it was. I told him that was not a 14-karat watch in the first place, and it was not an Elgin movement. He said he had purchased it for a solid 14-karat case and Elgin movement. He gave me to understand that he thought it was an Elgin movement up to the time I told him it was not.

X Q. 290. Do you know anything, of your own knowledge, about what representations were made to him at the time he bought the watch?

A. Only what he told me.

X Q. 291. So far as you know, he may have purchased the watch knowing exactly what it was, may he not?

A. That would be possible.

X Q. 292. The watch-case that customer had got was not made by the Illinois Watch Case Company, was it?

A. That I couldn't say.

X Q. 293. Did you ever know of any one buying a watch-movement in a watch-case made by the Illinois Watch Case Company under the belief that they were buying a watch-movement made by the Elgin National Watch Company?

A. Not to my personal knowledge.

X Q. 294. Watch-cases and watch-movements are distinct articles of manufacture, are they not?

A. Yes, sir.

X Q. 295. Do you think that the ordinary purchaser, seeing the word "Elgin" on the watch-movement, would

understand that the whole thing, both movement and case, were manufactured by the Elgin National Watch Company?

A. No, the ordinary customer would not; but some customers think they make the whole—both movement and case.

X Q. 296. Has not the City of Elgin, Illinois, been long and widely known as a point where watches were extensively manufactured?

A. It has around here, I know.

X Q. 297. Is there, in your judgment, any other city in the United States so well known as the City of "Elgin" as a point where watches are manufactured?

A. Yes, sir; Waltham, Mass.

X Q. 298. How extensively do you handle watch-movements made by the Elgin National Watch Company?

A. We probably sell more Elgin movements than all the others together.

Re-Direct Examination by Complainant's Counsel.

R-D. Q. 299. Who has given the City of Elgin its great reputation as a place where watches are made?

A. The Elgin National Watch Company.

LEO HETTICH.

Sworn to and subscribed before me this 14th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

Adjourned until 10 o'clock A. M., September 15th.

Ten o'clock A. M. Met pursuant to adjournment. Present as before.

In lieu of offering in evidence a certified copy of the opinion of the Circuit Court of Cook County, Illinois, in the case of *Elgin National Watch Co.* v. *Eppenstein et al.*, as was proposed at a previous session, it is agreed, subject to any objections on the part of defendants' counsel as to relevancy or competency, that complainant's counsel may put in evidence the report of that opinion printed on pages 142 and 143 of the Chicago Legal News, published December 24, 1892, Vol. XXV., No. 17. Complainant's counsel now offers in evidence said copy so printed, to be marked "Complainant's Exhibit Judge Horton's Opinion;" and also directs the Examiner to make a typewritten copy of the opinion and syllabus and append it to this deposition, in order that it may be printed in the record.

Defendants' counsel, waiving the production of a certified copy of the opinion, objects to its offer in evidence on the ground that it is incompetent, irrelevant and immaterial to the issues in this case.

CIRCUIT COURT OF COOK COUNTY.

Opinion Filed December 21, 1892.

Elgin Nat. Watch Co. v. *Eppenstein et al.*

TRADE-NAME—RIGHTS IN—INJUNCTION.

When parties have, by their mode of doing business, and by the quality of the product of their manufactories, and by selling and delivering to the public articles as valuable as represented or promised, built up under a chosen name, a reputation which is of great value, they should be protected in the use of that name.

In the present case, the defendants are enjoined from procuring to be recorded in the recorder's office a certificate of incorporation of a company bearing the same or similar name, of an old established corporation.

A trade-name may not only be as valuable as is a trade-mark, but it will be protected the same as will a trade-mark. The principles underlying these decisions are, first, the injury to the public by leading it to suppose that the goods of one are the goods of the other, and, second, the injury to the owner of the trade-mark or name, by the diversion of his trade into other channels, by the belief of the public that they are obtaining his goods.—[ED. CHICAGO LEGAL NEWS.

HORTON, J.: These cases are now before the court upon motions to dissolve the injunctions heretofore granted in said causes respectively. One of these injunctions restrains the defendants as follows: "From proceeding to complete the organization of 'the Elgin National Watch Case Company of Elgin, Illinois,' by recording in the office of the recorder of deeds of Kane County, Illinois, the final certificate of organization thereof heretofore issued by the secretary of state of the State of Illinois; and you, the said Charles A. Miller, recorder of Kane County, Illinois, from receiving, filing, or recording said final certificate in your office as such recorder or otherwise; and you, the said Max C. Eppenstein, Sol C. Eppenstein and Thomas W. Duncan from in any manner using or attempting to use the name 'The Elgin National Watch Case Company of Elgin, Illinois,' in the business of manufacturing or selling watches, watch-cases, jewelry or parts thereof or materials therefor, or any other name so nearly resembling the complainant's corporate name, 'Elgin National Watch Com-

pany,' as to be calculated to mislead or deceive, and from in any manner violating, infringing upon or interfering with the complainant's corporate name aforesaid." The other injunction is substantially the same.

It is urged by solicitors for defendants that the action of the secretary of state in granting the final certificate to "The Elgin National Watch Case Company, of Elgin, Illinois," is final and conclusive. The opinion of the Supreme Court of this state, cited in support of this position, being the *Illinois Watch Case Company* v. *Pearson*, 31 N. E. Rep., p. 400, as I read it, does not sustain this position.

The final certificate must be filed for record as required by the statute before the corporation is fully organized. "It is a condition precedent to the power of the corporation to proceed to business." *Levering* v. *McLoughlin*, Chicago Legal News, November 19, 1882, page 98, and cases there cited.

The certificate of incorporation or license issued by the secretary of state to "The Elgin National Watch Case Company, of Elgin, Illinois," not having been recorded as required by the statute, that company is not a corporation *de jure* or *de facto*. As to the questions involved in the cases now before this court, the case of *Bushnell* v. *Consolidated Ice Machine Co.*, 4 Am. R. R. & Cor. Rep., p. 527, also reported 27 N. E. Rep., 590, is cited as being in conflict with this view. That case was heard before me, and the Supreme Court in affirming the opinion of this court, does not decide, as is argued.

It is objected also by solicitors for defendants that "The Elgin National Watch Case Company, of Elgin, Illinois," is not made a party defendant to this cause, and that such company is a necessary party, and that this court cannot entertain jurisdiction to determine as to the

validity of its organization or its power to proceed to business in the absence of such company as a party. The complainants could not make that company a party defendant as a corporation, without by so doing admitting, for the purpose of these cases, that it is an existing corporation. *People* v. *Rensselaer & Saratoga R. R. Co.*, 15 Wendell, p. 115. That is one of the issues presented for the court to determine.

It is also urged that this court has no jurisdiction of the defendant, Charles A. Miller, recorder of Kane County.

A writ of injunction of this court operates throughout this state. Starr & Curtis' Statutes, Chap. 37, Sec. 68.

And besides, the recorder has filed his answer and submitted himself to the jurisdiction of this court, stating, "That he shall in all respects obey said injunction of this honorable court, and all other orders and directions which it may make in the premises respecting this defendant." The jurisdiction of the court will be maintained. *Vermont Farm Machine Co.* v. *Marble, Commissioner of Patents*, 20 Fed. Rep., 117.

Of the two bills before the court one is filed by "Elgin National Watch Company" and the other by "Elgin Watch Case Company." The name complained of is "The Elgin National Watch Case Company, of Elgin, Illinois."

The place of business and principal office of the two corporation complainants is in Chicago, Cook County, and the principal office and place of business of the proposed corporation is at Elgin, Kane County, Illinois.

On behalf of complainants it is urged that the use of the name, which it is claimed by the defendants they have the right to use, namely, "The Elgin National Watch Case Company, of Elgin, Illinois," will create confusion

in business circles and among their customers, and cause great damage to the complainants, and especially the complainant, The Elgin National Watch Company.

These are all Illinois corporation names. It is held by the Supreme Court of this state in *Illinois Watch Case Company* v. *Pearson*, 31 N. E. Rep., 400, that sections 2 and 50 of the Illinois Statutes, as to corporations, should be construed together, because, although embraced in different acts, they were passed at the same session of the legislature, etc. Section 2 applies to the original organization of corporations, and section 50 to the changing of names of corporations. In the section first named it is provided that "no license shall be issued to two companies having the same name," and in section 50, that "no name shall be assumed or adopted by any corporation similar to or liable to be mistaken for the name of any other corporation organized under the laws of this state, without the consent of such other corporation." Aside from and independent of the general rule laid down to the courts, the legislature has by this statute by implication provided that an Illinois corporation may, by proper legal proceedings, prevent the organization of any other corporation under the laws of this state, with the same or a similar corporate name, when the consent thereto of such existing corporation has not been obtained.

The protection of the public, as well as the rights of corporations or individuals, is to be considered by the court. It is clearly in the interest of the public that no corporation should be authorized, having the same name, as a pre-existing corporation, and also that no name should be assumed by a corporation similar to or liable to be mistaken for the name of any other corporation organized under the laws of this state.

Putting the word "The" at the commencement of the

name and the words "of Elgin, Illinois," at the conclusion, does not materially tend to prevent confusion. In ordinary use it would be called "Elgin National Watch Case Company."

A large number of affidavits have been filed in these causes, from which it appears that confusion has arisen in regard to these names. These affidavits also tend to show actual damages to the complainant, The Elgin National Watch Company.

It appears that the defendants are seeking to establish or incorporate "The Elgin National Watch Case Company, of Elgin, Illinois," as the successor of "Illinois Watch Case Company," whose watch-case factory has been for some time located at Elgin. It also appears that the "Illinois Watch Case Company" sought to change its name to "Elgin Watch Case Company," but that before such change of name was completed the complainant, "Elgin Watch Case Company," was incorporated under the general laws of this state, and thereupon the secretary of State refused a license to change the name of the "Illinois Watch Case Company" to the "Elgin Watch Case Company," presumably under the restriction contained in section 50 of the statute as to corporations above quoted, viz.: "That no name shall be assumed or adopted similar to or liable to be mistaken for the name of any other corporation."

Some of the defendants, or those interested with them, thereupon applied to the Supreme Court of this state to obtain a writ of mandamus by which they sought to compel the secretary of state to issue the certificate of the change of name above indicated. The Supreme Court refused to so command; and it is the opinion of the Supreme Court in that case, cited above as "*Illinois Watch Company* v. *Pearson.*"

The fact that defendants are so anxious and so persistent in their determination to adopt this or some similar name may be regarded as an evidence that they think it is valuable and desirable. If valuable and desirable, why? Is it not reasonable to presume that it is, in part, at least, because the complainant, the "Elgin National Watch Company," has made it so, when connected with watches or parts thereof?

When parties have, by their mode of doing business, and by the quality of the product of their manufactories, and by selling and delivering to the public articles as valuable as represented or promised, built up under a chosen name, a reputation which is of great value, they should be protected in the use of that name.

The protection of the public in preventing any other persons from assuming a like or similar name is at the same time a protection of such parties. A trade-name, like a trade-mark, may be of great value, and that value may have been entirely created by the parties who seek to be protected in its use.

The words "Elgin" and "National" and "Watch" are general or geographical words or names that cannot be appropriated to the exclusion of others; but they may be so used when taken together or in connection with certain manufactured articles as to create and establish a special signification, and in the use of those words, or any or either of them, in such connection, and with such special signification, the parties entitled thereto should receive protection from the courts.

A trade-name may not only be as valuable as is a trade-mark, but it will be protected the same as will a trade-mark; *Gray* v. *Taper Sleeve Pulley Works*, 16 Fed. Rep., 439.

The priciples underlying the decisions supporting the

views here expressed are: first, the injury to the public by leading them to suppose that the goods of one are the goods of the other; and, secondly, the injury to the owner of the trade-mark, or name, by the diversion of his trade into other channels, by the belief of the public that they are obtaining his goods. *Farmers Loan & Trust Company* v. *Farmers Loan & Trust Company of Kansas*, 21 Abbott's New Cases, 109.

The rule as to trade-names herein stated applies to corporations the same as it does to individuals.

That confusion would follow if "The Elgin National Watch Case Company, of Elgin, Illinois," should be incorporated and continue to transact business in that name, seems to me certain, and is supported by numerous affidavits. As an evidence to my mind that such confusion would follow I may say that I found it necessary to write these several names down and thus impress them clearly upon my mind to prevent confusion in considering these cases. That damage to the complainant watch company would result seems to be more than probable.

From these conclusions it follows that the motion to dissolve the injunction must be denied.

W. H. & J. H. MOORE & PURCELL, and BANNING, BANNING & PAYSON, for complainant.

D. J. WILE and BOND, PICKARD & ADAMS, for defendants.

FRED G. THEARLE, JR., being first duly sworn, deposes and testifies as follows:

Q. 300. Please state your name, age, residence and occupation.

A. Name, Fred G. Thearle, Jr.; age, thirty-six; residence, Chicago; occupation, wholesale and retail jeweler.

Q. 301. Do you handle watches in your business?

A. Yes.

Q. 302. How long have you been engaged in the watch business?

A. Nineteen years.

Q. 303. Have you handled any considerable number of watches containing movements made by the Elgin National Watch Company?

A. Yes.

Q. 304. By what name are the watches made by the Elgin National Watch Company everywhere known?

A. As "Elgin watches."

Q. 305. Have you ever handled any watch-cases made by the Illinois Watch Case Company?

A. No.

Q. 306. Please examine the three watch-cases which I now show you, one of which is marked "Complainant's Exhibit Defendants' Elgin Commander Watch Case," another is marked "Complainant's Exhibit Defendants' Elgin Tiger Watch Case," and the third, not yet marked as an exhibit, is a watch-case made by the Illinois Watch Case Company and marked on the inside in one place "Elgin Giant" and in another place "Warranted Giant 20 years," and also contains a certificate in which it is called the "Elgin Giant," and, attached to the bow by a string, a dealer's tag on which is marked the words "Elgin Giant." After examining said cases with the word "Elgin" stamped or engraved on the "Tiger" and "Commander" exhibits, and also stamped on the inside of the back case of the "Giant" exhibit, please state whether or not, in your opinion, the introduction of these watch-cases of defendants upon the market would be liable to lead to frauds upon the public and to customers being deceived into buying for Elgin watches

watches not made by the Elgin National Watch Company?

A. It would, in my opinion.

Q. 307. Are cheap watches largely put onto the market at auction?

A. There is a large number sold at auction every year.

Q. 308. How is that done?

A. It is done in two ways. One is by a jeweler employing an auctioneer; the other is by opening auction sales-rooms by professional auctioneers.

Q. 309. Do you know the firm of Max C. Eppenstein & Co., of Chicago?

A. I know of them—yes.

Q. 310. How are their goods handled?

A. In addition to the regular methods of selling I have always understood that they made a specialty of the auction business and of supplying auctioneers.

Q. 311. Do you know whether or not they handle large numbers of watch-cases made by the Illinois Watch Case Company?

A. I understand that they make a specialty of the product of that factory.

Cross-Examination by Mr. Banning.

X Q. 312. When you say that the watch-movements made by the Elgin National Watch Company are everywhere known as Elgin watches, what do you mean by "everywhere"?

A. Throughout the United States and wherever in foreign countries the Elgin National Watch Company solicits business.

X Q. 313. How do you know? Have you been there to ascertain?

A. No.

X Q. 314. You simply know that the products of that

company are known among those persons and firms with which you have done business as "Elgin Watches." Isn't that the extent of your information?

A. Yes.

X Q. 315. You have said, in effect, that these exhibits before you were liable to lead to deception. Have you ever known of anyone being deceived by these exhibits or others containing the same words?

A. No.

X Q. 316. A watch-case and a watch-movement are separate and distinct articles of manufacture, are they not?

A. Yes.

X Q. 317. Do you consider the use of the word "Elgin" on watch-movements, for instance, would be understood by the ordinary purchaser as indicating that the whole thing—the watch-movement and the watch-case—were made by the Elgin National Watch Company?

A. Yes; in many instances.

X Q. 318. Have you ever known of the product of the Elgin National Watch Company being sold at auction?

A. Yes.

X Q. 319. The selling at auction, then, isn't confined to the product of the Illinois Watch Case Company, is it?

A. No.

X Q. 320. When you see the word "Elgin" on a watch-movement, for instance, where do you understand such watch-movement was made?

A. At Elgin, Illinois.

X Q. 321. That is where the Elgin National Watch Company has its factory, is it not?

A. It is.

X Q. 322. And that is also where the Illinois Watch Case Company has its factory, is it not?

A. Yes.

X Q. 323. Isn't the city of Elgin, Illinois, widely known as a point at which watches are manufactured?

A. Yes.

X Q. 324. What other city in the United States is as well known as a place at which watches are made as Elgin, Ill.?

A. Probably Waltham, Mass.

X Q. 325. Any other, in your opinion?

A. No.

Re-Direct Examination by Complainant's Counsel.

R-D. Q. 326. Do you know of any other watch manufactory at Elgin, Ill., besides that of the Elgin National Watch Company?

A. No—watch-movements.

R-D. Q. 327. Is or is not the Elgin National Watch Company the party which has given the City of Elgin its wide reputation as a place where watches are made?

A. In my opinion, it is.

R-D. Q. 328. You have testified that a watch-case and a watch-movement are separate and distinct articles of manufacture; how is it with the ordinary customer or user—does he regard them as separate and distinct articles, or does he look at them as one article called, in their entirety, a watch?

A. I think the majority of purchasers regard the case and movement as simply a complete watch.

Complainant's counsel offer in evidence the watch-case which has been referred to during Mr. Thearle's deposition as marked with the words "Elgin Giant," said watch-case containing the printed certificate marked with the same words, and the Examiner is directed to mark this exhibit "Complainant's Exhibit Defendants' Elgin Giant Watch-Case."

It is admitted by defendants' counsel, as at present advised, that this exhibit marked "Elgin Giant," and numbered 95,224, is a watch-case made by the defendant, the Illinois Watch Case Company.

FRED G. THEARLE, JR.

Sworn to and subscribed before me this 15th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

LOUIS H. SCHAFER, being first duly sworn, deposes and testifies as follows:

Q. 329. Please state your name, age, residence and occupation.

A. Louis H. Schafer; age, twenty-seven years; residence, Chicago; occupation, I have charge of the watch department of Norris, Alister & Co., Chicago.

Q. 330. Does that concern do a large business in watches?

A. Yes, sir.

Q. 331. How long you been in the watch business?

A. Fifteen years.

Q. 332. Does your firm deal largely in watch-movements made by the Elgin National Watch Company, and in watches containing said movements?

A. It does.

Q. 333. Does your firm handle any watch-cases made by the Illinois Watch Case Company?

A. No.

Q. 334. By what name are watches containing movements made by the Elgin National Watch Company known to the trade and the public?

A. "Elgin" watches.

Q. 335. I show you three watch-cases, marked, respectively, "Complainant's Exhibit Defendants' Elgin Commander Watch-Case," "Complainant's Exhibit Defendants' Elgin Tiger Watch-Case" and "Complainant's Exhibit Defendants' Elgin Giant Watch-Case," and ask you to examine the words engraved or stamped on the inside of said three cases. Having done so, will you please state whether or not, in your opinion, the introduction of watch-cases marked as these three cases are marked is liable to mislead the public and to cause the ordinary purchaser or user to purchase as the product of the Elgin National Watch Company watches containing movements that were not made by the Elgin National Watch Company, but by other manufacturers?

A. In my opinion, it would.

Cross-Examination by Mr. Banning.

X Q. 336. Watch-cases and watch-movements are separately distinct articles of manufacture, are they not?

A. Yes, sir.

X Q. 337. Where does the Elgin National Watch Company have its factory and make its watch-movements?

A. At Elgin, Ill.

X Q. 338. Whenever you see a watch-movement with the word "Elgin" on it, what do you understand from such word?

A. That it is manufactured by the Elgin National Watch Company, at Elgin, Ill.

X Q. 339. In your opinion, would an ordinary purchaser in seeing the word "Elgin" on a watch-movement made by the Elgin National Watch Company understand that the whole thing—the watch-movement and its case—were made by the Elgin National Watch Company?

A. Yes; for that name "Elgin" being so well known by the general public would naturally convey that impression.

X Q. 340. The City of Elgin, Ill., is widely known as a point for the manufacture of watch-movements, is it not?

A. Yes.

X Q. 341. Do you know of any city in this country that is more widely known for such manufacture?

A. No.

X Q. 342. You have expressed the opinion that the introduction into the trade of cases like these three exhibits would cause an ordinary purchaser to be deceived; have you, in your experience, ever known of any one being so deceived?

A. No.

X Q. 343. Look again at these three exhibits and tell us which word or words on or about them would cause an ordinary purchaser, in your opinion, to be deceived.

A. The word "Elgin."

X Q. 344. The word "Elgin" is used in different connections in these exhibits; at which one of these places would the word "Elgin" cause a deception or mistake?

A. The word stamped on the metal of the case.

X Q. 345. In your opinion, would the word "Elgin," as used in the printed guaranty certificates in the cases of these three exhibits, be liable to cause mistake or deception to the ordinary purchaser?

A. I think that the word "Elgin," as used in the guaranty, would have a great influence on a number of buyers of the watch-cases referred to.

X Q. 346. The word "Elgin" is used twice in each of these printed guaranty certificates. Which one of these two uses do you think would be liable to cause

mistake or confusion as to the origin of the goods?

A. "Elgin, Ill."

Re-Direct Examination by Complainant's Counsel.

R-D. Q. 347. Suppose that a dealer was dishonest enough to endeavor to sell, as an Elgin watch, a movement not made by the Elgin National Watch Company, enclosed in a case made by defendants, having the word "Elgin" stamped upon the case and having the printed guaranty placed within the back case. Would such dealer, in your opinion, permit the printed guaranty to remain within the case and be seen by his customers, or would he remove such printed guaranty before showing the case?

A. If he were inclined to be dishonest, I should say that he would undoubtedly remove the guaranty and show the stamp in the case only.

LOUIS H. SCHAFER.

Sworn to and subscribed before me this 15th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

Adjourned until 2 P. M.

Two o'clock P. M. Met pursuant to adjournment. Present as before.

Mr. GEORGE S. PRINDLE, being first duly sworn, deposes and says as follows:

Q. 348. Please state your name, age, residence and occupation.

A. Name, Geo. S. Prindle; age, sixty; residence, Washington, D. C.; occupation, lawyer.

Q. 349. Complainant's counsel put in evidence in this case a copy of the Washington Evening Star of August

8, 1896, which has been marked "Complainant's Exhibit Evening Star." It was offered in evidence by reason of a bicycle advertisement appearing in the first column of the eighth page of the newspaper. Will you please state how that newspaper came to the attention of complainant's counsel?

A. This paper was purchased by me in Washington and brought by me to Chicago and placed in the hands of complainant's counsel.

Q. 350. Is it of the regular issue of the Evening Star of that date?

A. It is.

Q. 351. If after seeing that newspaper you interviewed the party who caused the advertisement to be put in it, will you please state the fact and when it was and what occurred at the interview?

Defendants' counsel objects to the question if it is sought to elicit what the party said to the witness, as calling for hearsay evidence and as being incompetent.

A. Upon the 10th day of August last one of my clerks called my attention to the fact that bicycles were advertised in the Evening Star as manufactured by the Elgin National Watch Company. I immediately went out and purchased the copy of said paper here in evidence, and then called at the place of business noted in in the advertisement, to wit, Nos. 1110 and 1112 Connecticut avenue, Washington, D. C. Upon reaching the said place I inquired for one of the firm, there being two names on the sign over the door. A gentleman came forward and stated that he was a member of the firm, and I then inquired whether they sold bicycles made by the Elgin Watch Company, stating that I had seen an advertisement to such effect in the Evening Star. The party

answered that they did, and showed me several of the bicycles, praising them very highly, and stating, in substance, that as they were the product of the Elgin Watch Company they must, of necessity, be the very best. After some considerable conversation, in which I drew him out fully upon this point, I asked him how he knew that they were manufactured by the Elgin Watch Company, and he stated in reply that he was so informed by those from whom he obtained the bicycles. I then informed him that the Elgin Watch Company did not manufacture bicycles, had never manufactured bicycles, and, in fact, had never manufactured anything but watches; and that, therefore, his statements, both as contained in his advertisement and made orally, were false and liable to get him into trouble if continued. In farther defense of his position he handed me a catalogue of the Elgin Cycle Company, which was a *fac simile* of the catalogue heretofore filed in evidence and marked "Complainant's Exhibit Defendants' Bicycle Catalogue," and pointed to the cut upon the first page of such catalogue as showing the Elgin Watch Company factory.

Upon my insistance that the Elgin Watch Company did not make the bicycles which he sold, and that he must cease so representing, he stated that he would promptly do so and would change his advertisements so that beyond those appearing in the evening papers of that day, which had already gone to print, there would be no farther occasion for complaint. I carefully examined the papers upon the next day, and found that in his advertisements all reference to the Elgin Watch Company had been omitted.

Q. 352. Have you seen the factory of the Illinois Watch Case Company at Elgin recently?

A. I have never seen it, to my knowledge.

Cross-Examination by Mr. Banning.

X Q. 353. Do you know the name of the parties with whom you talked at 1110 and 1112 Connecticut avenue?

A. I do not, as I did not impress them upon my memory at the time.

X Q. 354. Do you know who composed the Connecticut Avenue Cycle Company which you called on in Washington?

A. I do not. The party with whom I had conversation assumed full responsibility for the advertisement, and as the offensive portion of the advertisement was promptly withdrawn, I had no reason for farther inquiry.

X Q. 355. Do you ride a bicycle?

A. I do not.

GEO. S. PRINDLE.

Sworn to and subscribed before me this 15th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

Mr. GEORGE E. HUNTER, being first duly sworn, deposes and testifies as follows:

Q. 356. Please state your name, age, residence and occupation.

A. Name, George E. Hunter; age, thirty-seven; residence, Elgin, Ill.; occupation, assistant superintendent Elgin National Watch Company.

Q. 357. Are you familiar with building in which the Illinois Watch Case Company carries on its business at Elgin?

A. I am.

Q. 358. Please look at the picture on the first page of "Complainant's Exhibit Defendants' Bicycle Cata-

logue," and state whether it is a correct representation of the building occupied by the Illinois Watch Case Company and the so-called Elgin Cycle Company.

A. It is not.

Q. 359. The picture represents an establishment with a large front building, a large parallel rear wing, and a large connecting building at one end of the other two; how does this arrangement differ from the real arrangement of the Illinois Watch Case Company's building?

A. The front elevation is substantially the same as the building. There are, however, no buildings in the rear of a greater height than one story, and those very much smaller than those represented in the cut.

Q. 360. I ask you to look at "Complainant's Exhibit Photograph of Works of Illinois Watch Case Company," and state whether that appears to be a correct representation of the building occupied by the Illinois Watch Case Company.

A. It is a correct representation of the front of the building.

Q. 361. Please look at the photograph I now hand you, and state what it represents.

A. This photograph represents a rear view of the building of the Illinois Watch Case Company.

Q. 362. A rear view of the same building that is shown in "Complainant's Exhibit Photograph of Works of Illinois Watch Case Company"?

A. Yes.

Complainant's counsel directs the Examiner to have the photograph which was just shown to the witness properly mounted and file it in evidence as "Complainant's Exhibit Photograph of Rear View of Defendants' Factory."

Q. 363. I now show you another photograph, and ask you to state what it represents.

A. This photograph represents the works of the Elgin National Watch Company at Elgin, Illinois.

Complainant's counsel offer in evidence the photograph last referred to by the witness, to be marked "Complainant's Exhibit Photograph of Works of Elgin National Watch Company."

Q. 364. Referring to the building conspicuous in "Complainant's Exhibit Photograph of Works of the Illinois Watch Case Company," what is the width of that building, if you know?

A. The width of the original building in which watch-cases are said to be manufactured is about thirty feet. The new portion, shown extending from the fire-wall to the right in this photograph, is about forty feet wide.

GEORGE E. HUNTER.

Sworn to and subscribed before me this 15th day of September, 1896.

L. A. GARDINER,
Notary Public.

O. C. HANSEN, being duly sworn, deposes and testifies as follows:

Q. 365. Please state your name, age, residence and occupation.

A. Name, O. C. Hansen; age, fifty-one years; residence, Chicago; occupation, watchmaker.

Q. 366. Where are you employed?

A. With Spaulding & Co., Chicago.

Q. 367. What is their business?

A. Dealers in watches and jewelry.

Q. 368. Do they do a large business in watches?

A. Yes, sir.

Q. 369. Wholesale or retail?

A. Retail only.

Q. 370. Do they handle a good many watches having movements made by the Elgin National Watch Company?

A. Quite a number.

Q. 371. By what name are such watches known to the trade and the public?

A. "Elgin watch."

Q. 372. Do Spaulding & Co. handle any watch-cases made by the Illinois Watch Case Company?

A. No, sir.

Q. 373. Please examine the three watch-cases now shown you, complainant's exhibits marked, respectively, "Defendants' Elgin Commander Watch-Case," "Defendants' Elgin Tiger Watch-Case," and "Defendants' Elgin Giant Watch-Case," and particularly observe the words and figures engraved or stamped on the inside of the cases. Then state whether or not, in your opinion, the introduction of watch-cases like these upon the market, with the word "Elgin" appearing engraved on the inside of the case, would be likely to mislead the ordinary buyer and user and to cause people to purchase as "Elgin watches" watches whose movements were not made by the Elgin National Watch Company, but were made by other manufacturers and cased in cases like these?

A. I should say that it would give a great opportunity to those who were evilly disposed or wished to deceive the watch-buying public, by calling their attention to the name "Elgin." That has become a name that means a good watch.

Q. 374. Does the ordinary user of watches know the

distinction between the movement and the case, or does he look upon the whole thing as the "watch"?

A. They look upon the whole thing as a watch.

Q. 375. And if they found the word "Elgin" engraved or stamped anywhere upon the case or the movement, would they, in your opinion, be liable to be led to believe that the whole watch is an Elgin watch?

A. I think a great many would be deceived by it.

Cross-Examination by Mr. Banning.

X Q. 376. Did you, in your own experience, ever know of a person's being deceived into buying a watch because its case was like one of these three exhibits?

A. No; we never sold any of these cases.

X Q. 377. Where do you find in these exhibits the use of the word "Elgin" which you think would cause a person to be deceived?

A. Inside the back of the case in one instance, and inside the cap in all.

X Q. 378. Do you mean that the word "Elgin" appears as stamped into the metal?

A. Yes, sir.

X Q. 378½. Take the use of the word "Elgin" as you find it in the printed guaranty certificate in these exhibits; do you think that as it is there used in the printed certificate it is likely to deceive an ordinary purchaser?

A. I think so.

X Q. 379. The word "Elgin" appears twice in these printed certificates—once as "Elgin Giant" and once as "Elgin, Illinois," for example. In which of these two uses do you think the word "Elgin" calculated to cause an ordinary purchaser to be misled or deceived?

A. I think both.

X Q. 380. Does the word "Elgin," in your opinion,

even though it appears on the movement of the watch, convey to ordinary purchasers the understanding that the whole thing—both the movement and the case—are the product of the Elgin National Watch Company?

A. My experience has been that most people are under the impression when they buy a watch that the case is made by the same company as the movement.

X Q. 381. You have expressed the opinion that the use of the word "Elgin" on the watch-case is calculated to cause the ordinary purchaser to believe that the watch-movement in the case is made by the Elgin National Watch Company. Is this also true, in your opinion, if the word "Elgin" appears on the watch-movement? Is the ordinary purchaser, in that case, liable to understand that the whole thing, both movement and case, is made by the Elgin National Watch Company?

A. In a great many cases—yes, sir.

X Q. 382. When an ordinary purchaser sees the word "Elgin" on a watch, either on the case or on the movement, what, according to your experience, does he understand as to where the watch was made?

A. In this locality he would understand it was made at Elgin, Illinois.

X Q. 383. Is not Elgin, Illinois, widely known as a place where watch-movements are manufactured?

A. Well, of course, here, in this locality, we know of Elgin, Illinois, but when we get away from here—take it over in Europe, for instance—they know the Elgin watch—it is a trade-mark.

X Q. 384. Have you been over in Europe to find out what they think?

A. I have.

X Q. 385. When were you there?

A. The last time two years ago.

X Q. 385½. What other city in this country beside Elgin, Illinois, is widely known as a point for the manufacture of watches or watch-movements?

A. I don't think of any that is very widely known. We know here, of course, of Rockford, Springfield, and used to be in Aurora, and Peoria. There is a watch factory in Waltham, Massachusetts—two, in fact, at Waltham; one at Canton, Ohio; one at Columbus, Ohio.

X Q. 386. Is not Waltham widely known as a place for the watch-manufacturing business?

A. Yes, sir.

O. C. HANSEN.

Sworn to and subscribed before me this 15th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

Adjourned until 11 o'clock, September 16.

Eleven o'clock, September 16. Met pursuant to adjournment; present as before.

JOHN SCHAUB, being first duly sworn, deposes and testifies as follows:

Q. 387. Please state your name, age, residence and occupation.

A. Name, John Schaub; age, fifty-two; residence, Chicago; occupation, salesman with C. D. Peacock.

Q. 388. Is Mr. C. D. Peacock, of Chicago, largely engaged in dealing with watches and watch-movements?

A. Yes, sir.

Q. 389. Wholesale or retail?

A. Retail.

Q. 390. How long have you been in the watch business?

A. Thirty years.

Q. 391. Does Mr. Peacock handle a great many watch-movements and watches containing watch-movements made by the Elgin National Watch Company?

A. He does.

Q. 392. Does he handle any watch-cases made by the Illinois Watch Case Company?

A. He does not.

Q. 393. I show you now three exhibits filed in this case, consisting of watch-cases made by the Illinois Watch Case Company. One of them is called the "Elgin Tiger," one the "Elgin Commander," and one the "Elgin Giant." Please examine these three watch-cases, and note particularly the words stamped on the inside of these cases. After you have examined them, please state whether or not they are likely to be made use of for deceiving the public and whether or not the word "Elgin," which appears stamped on the inside of these cases, would be likely to deceive the ordinary purchaser and user into buying watches on the supposition that they were made by the Elgin National Watch Company, when, in fact, they were not made by that company, but by somebody else?

A. Those could be used for deception. The word "Elgin" on them would lead the purchaser to believe that it contained an Elgin movement.

Q. 394. By what name are watches and watch-movements made by the Elgin National Watch Company generally known to the trade and to the public?

A. When the question is asked, What kind of a watch it is? it is usually answered, "An Elgin watch."

Q. 395. And that means a watch made by the complainant here, does it?

A. Yes, sir.

Q. 396. Is it or is it not a fact that a great many of

the ordinary users of watches look upon the article as a "watch," and do not distinguish the case and the movement as being different things made by different manufacturers?

A. They do so look upon it.

Cross-Examination by Mr. Banning.

X Q. 397. What is a "watch"?

A. It is a machine made for measuring time.

X Q. 398. A watch-case is not a watch, is it?

A. It goes to make up part of the watch.

X Q. 399. It is simply the box in which the watch—that is, the machine which measures time—is enclosed for protection, is it not?

A. To a certain extent it is; but without the case it would not be a complete watch.

X Q. 400. If you took the case off you would still have a machine which would measure the time correctly, would you not?

A. That would depend upon the position in which you would put the movement and where you would put it.

X Q. 401. The case and the watch-movement are separate and distinct articles of manufacture, are they not?

A. Yes, sir.

X Q. 402. How widely or extensively would you say the City of Elgin, Illinois, was known as a point for the manufacture of watches?

A. The Elgin watch is known all over the United States, and, I guess, the greater part of Europe.

X Q. 403. Is not the City of Elgin, Illinois, widely known as a point where watches are manufactured?

A. The Elgin watch, when sold or when explained as to the movement, the question is never asked, In what

town it is manufactured? The words stating "Elgin watch" are sufficient.

X Q. 404. When people hear the name "Elgin watch" they know it is manufactured at Elgin, Illinois, do they not?

A. Not always.

X Q. 405. A great many people know that, do they not?

A. They do in this vicinity.

X Q. 406. Is not the City of Elgin, Illinois, more celebrated from the fact that the Elgin National Watch Company has its factory there than from any other circumstance?

A. It would where it was explained that the factory was located there.

X Q. 407. What other product manufactured at Elgin, Illinois, gives it the reputation that it has as the point where the complainant's watches are manufactured?

A. I really don't know how to answer that question. I don't know exactly what you refer to. Do you refer to other industries that are there?

X Q. 408. Elgin is celebrated also as a great butter market, is it not?

A. I've heard so.

X Q. 409. You have said that you considered that the word stamped on these exhibit cases was liable to deceive purchasers. Did you personally ever know of a person being so deceived?

A. Not with any of those cases, because we do not handle them; but any one buying a case of that kind with an inferior or different make of watch from an Elgin would naturally be deceived by seeing the word "Elgin" on the case, as it is very seldom stated in what town or place the Elgin watch comes from.

X Q. 410. Then you, yourself, do not know of any case where a purchaser has been deceived by such cases as these exhibits?

A. I do not.

X Q. 411. I see in each of these cases a printed guaranty certificate on which the word "Elgin" appears twice—once as "Elgin Giant," for example, and once as "Elgin, Ill." Do you consider that the use of the word "Elgin" as used in this printed guaranty certificate is calculated to deceive any one?

A. I do, for when they see the word "Elgin" nine-tenths of them would not read any farther.

X Q. 412. The Illinois Watch Case Company has its factory at Elgin, Illinois, has it not?

A. I understand so.

X Q. 413. If it did not use the words "Elgin, Ill." as shown in the printed guaranty certificate, can you tell me how it could inform the public where it made its watch-cases?

A. I don't know.

X Q. 414. Do you know of any way that the Illinois Watch Case Company could inform the public where it manufactured its watch-cases, without using the word "Elgin" in some way?

A. Watch-cases that are made in solid gold usually have the place stamped on the inside of the cover where they are made.

X Q. 415. I again ask you, as a man engaged in the business, if you know of any way that the Illinois Watch Case Company can inform the public where it makes its watch-cases without using the word "Elgin" in some way?

A. If they are located at Elgin, I suppose it would be proper to put it Elgin, Ill.

X Q. 416. Assume that the Illinois Watch Case Company has its factory at Elgin, Illinois, and that it makes its watch-cases at Elgin, Illinois. Now, do you know of any way that it can inform the public where its watch-cases are made without using the word "Elgin" in some way?

A. I don't know.

Re-Direct Examination by Complainant's Counsel.

R-D. Q. 417. Would not its bill-heads, invoices and correspondence inform its customers where the cases were made, without stamping in the case a word liable to deceive the ordinary customer into buying other people's make of watches?

A. They would.

R-D. Q. 418. What advantage is it to the ordinary user of watches around over the country to know that the case of his watch is made in a certain town instead of being made somewhere else?

A. I don't know that it would make any difference.

R-D. Q. 419. In one of these exhibit watch-cases I note that the words "Elgin 14 K" are stamped; what does 14 K mean?

A. It usually implies that the case is solid 14 karat gold.

Re-Cross Examination by Mr. Banning.

R-X Q. 420. The printed guaranty certificates in these watch-case exhibits are intended to go with the cases so that the purchaser will have a guaranty certificate, are they not?

A. Yes, sir.

R-X Q. 421. The guaranty appears to be for twenty years in two of the exhibits; now is it not important to

the purchaser that the guaranty certificate should inform him where the watch-case was made, so that he can know where to apply in case he wants to call for the fulfillment of the guaranty?

A. Yes; but very frequently in a good many cases it is lost or removed.

R-X Q. 422. You have volunteered, in your last answer, a statement of fact, namely, that the garanty certificate, in a great many cases, is lost or removed. How do you know what takes place when purchasers have bought watch-cases with guaranty certificates in them like these?

A. I know they have been taken out right before my eyes in selling the case.

Re-Direct Examination.

R-D. Q. 423. What is to prevent the dishonest dealer or auctioneer from removing the guaranty certificate and then selling the watch as an Elgin watch, relying upon the word "Elgin" stamped in the case to aid him in deceiving the customer?

A. There is nothing to prevent him from taking the guaranty out.

JOHN SCHAUB.

Sworn to and subscribed to before me this 16th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

Adjourned by consent until September 28, 1896, 10 o'clock A. M.

Ten o'clock A. M., September 28, 1896. (Monday.) Met pursuant to adjournment. Present: Mr. Thomas Banning for defendants, Mr. L. Hill and Mr. Geo. S. Prindle for complainants.

Adjourned until 2 o'clock P. M.

Two o'clock P. M. Met pursuant to adjournment. Present as before.

JOHN M. CUTTER recalled.

Q. 424. Are you the same John M. Cutter who was previously a witness in this suit?

A. I am.

Q. 425. Have you examined the books of the Elgin National Watch Company to ascertain, approximately, what amount of money has been spent by that company in Elgin, Illinois, during the last thirty years for wages and labor?

A. Yes, sir, I have. I find that we have expended over $25,000,000 for labor alone since the beginning of the company's operations in Elgin.

Q. 426. In good years during the last decade, how much does that item run up to in a year?

A. From $1,500,000 to $1,750,000.

X Q. 427. About what has it amounted to per year during the last two years?

A. From $750,000 to $1,000,000.

JNO. M. CUTTER.

Sworn to and subscribed before me this 28th day of September, 1896.

L. A. GARDINER,
Notary Public.

HENRY M. CARLE, being duly sworn, deposes and testifies as follows:

Q. 428. Please state your name, age, residence and occupation.

A. Name, Henry M. Carle; age, forty-five years; residence, Chicago, Ill.; occupation, agent for the Keystone Watch Case Company, of Philadelphia, Pa.

Q. 429. How long have you been agent for that company?

A. About fifteen years.

Q. 430. What is the extent of that company's business?

A. In normal times we did business of about $2,500,000 per annum.

Q. 431. Have you any idea of how many watch-cases that company have put on the market?

A. I couldn't say as to that. Our numbers stamped on the cases run now from 3,000,000 to 4,000,000.

Q. 432. Those numbers indicate the number made by that company?

A. They do, with the exception of a few that may be wanted in a series; a series is 100,000. When that is completed they start a new hundred thousand.

Q. 433. Where are your company's shops?

A. Philadelphia, Pa.

Q. 434. Has your company been, or is it now, in the habit of stamping or marking upon watch-cases of its manufacture the name "Philadelphia" or any other name to indicate where its shops are located?

A. No, sir.

Q. 435. Is the word "Philadelphia" stamped on your cases at all?

A. No, sir.

Q. 436. Are you extensively acquainted with the watch-cases manufactured in this country by other manufacturers than your company?

A. Yes, sir.

Q. 437. Outside of the Illinois Watch Case Company, what is the general custom of watch-case manufacturers in this country with respect to stamping or marking upon their watch-cases the name of the place where said cases are made?

A. There are none except the Dueber Watch Case Company who stamp the name on the case.

Q. 438. How long has the Dueber Watch Case Company been stamping its place of manufacture upon the case?

A. I imagine it is a year; I can't state positively as to the time, but I think it is a year.

Q. 439. Were you formerly employed with the Dueber Company?

A. Yes, sir.

Cross-examination waived.

HENRY M. CARLE.

Sworn to and subscribed before me this 28th day of September, 1896.

L. A. GARDINER.

[SEAL.] Notary Public.

MR. HENRY M. CARLE recalled.

Q. 440. Does your company sell anything but watch-cases?

A. Not for use in this country.

Q. 441. Have you ever known of any instance where a person who had bought a watch cased in one of your cases imagined that he was in possession of a watch of

which both the case and movement were made by your company?

A. Yes, sir.

Q. 442. Give an instance.

A. We received a letter on the 18th of September, 1896, from a man in Iowa. I have the letter here, and will read it to the Examiner. It reads as follows:

By Mr. Banning: Defendant's counsel objects to the reading of the letter, or to any use of it in evidence, unless it be from one of the defendants, or unless it emanated from them in the same way.

Witness continues:

"Sept. 16, 1896, Watson, Missouri.

"*Dear Beloved:* So kind as to send me a main spring. I have this time-piece now three years.

"Yours truly,

"Chris Tiess.

"Over."

Then on the other side he says:

"McBroom and Crane was the retail dealer at Barnes City, Iowa. Please return the tag again. Now if any extra charges state."

Q. 443. What did he send you with this letter?

A. A broken main-spring and a guaranty of the case.

Q. 444. One of your printed guaranties?

A. Yes, sir; guaranty of the 14-karat "Boss" filled case.

Q. 445. What reply did you make to him?

A. I wrote him in reply, under date of September 18, 1896, that the guaranty of our cases did not cover the guaranty of the movement—that he would have to send his watch to a retail jeweler or to some repairer or watch material house in the United States, and that he would have to specify and give the name of the movement.

Q. 446. Does your company make watch-movements?

A. No, sir.

HENRY M. CARLE.

Sworn to and subscribed before me this 28th day of September, 1896.

[SEAL.] L. A. GARDINER,
Notary Public.

GEORGE WEIDIG, being duly sworn, deposes and testifies as follows:

Q. 447. Please state your name, age, residence and occupation.

A. Name, George Weidig; age, thirty-four; residence, Chicago; occupation, agent for Joseph Fahys & Co., New York City, manufacturers of watch-cases.

Q. 448. How long have you been agent for Joseph Fahys & Co.?

A. About fifteen years.

Q. 449. How large a business do they do in the manufacture of watch-cases?

A. Their capacity is about 2,000 cases a day.

Q. 450. About how many cases have they made altogether?

A. In the neighborhood of five million.

Q. 451. Has it been or is it now the custom of Joseph Fahys & Co. to stamp or mark anywhere on their watch-cases the name of the place where their shops were located?

A. It has not, and it is not at the present time.

Q. 452. Are you acquainted with the general practice of watch-case makers in this country in that respect?

A. I am.

Q. 453. Outside of the Illinois Watch Case Com-

pany, what is the general practice in that respect of other watch-case makers?

A. There is no practice outside of the Illinois Watch Case Company, and one other concern—the Dueber Watch Case Company.

Q. 454. Do you mean that no other companies in this country, except the two you mention, stamp on their cases the name of the place where their shops are located?

A. That is what I mean.

Q. 455. How long has the Dueber Watch Case Company been in the habit of stamping on its cases the name of the place where its shops are located?

A. To my knowledge, about one year.

Q. 456. Where are its shops located?

A. Canton, Ohio.

Q. 457. Is it connected there with a movement manufacturing concern also?

A. It is—yes, sir.

Cross-examination waived.

GEORGE WEIDIG.

Sworn to and subscribed before me this 28th day of September, 1896.

[SEAL.]

L. A. GARDINER,
Notary Public.

SAMUEL C. PAYSON, being duly sworn, deposes and testifies as follows:

Q. 458. Please state your name, age, residence and occupation.

A. Samuel C. Payson; age, thirty-one; residence, Chicago; occupation, watch-case manufacturer.

Q. 459. What concern are you connected with?

A. Courvoisier-Wilcox Manufacturing Company.

Q. 460. Are they in the business of manufacturing watch-cases?

A. Yes, sir.

Q. 461. What is the custom of that concern with respect to stamping or marking upon their watch-cases the name of the place where their shops are located?

A. They have never done it.

Q. 462. What do they mark on their cases?

A. On their gold cases they have a stamp—"Warranted 14 Karat, U. S. A.;" and underneath, "C. W. Mfg. Co."

Q. 463. That is all they mark on their cases?

A. That is marked on the gold cases.

Q. 464. What do they mark on their filled cases?

A. They mark simply the grade, the number, and the words "Essex Watch Case Co."—that was the name of the old company that our company bought out.

Q. 465. Are you acquainted with the general custom among watch-case makers with respect to marking or not marking on their watch-cases the name of the place where said cases were made?

A. I am acquainted with the general custom—I don't think it is generally done.

Q. 466. Do you recall any case-maker, except the Illinois Watch Case Company, that marks on his cases the name of the place where the cases are made?

A. I have been told that within a short time that John C. Dueber does that; I didn't know that until a short time ago.

Q. 467. You don't know of anybody else who does that, do you?

A. No; I do not.

Cross-examination waived.

SAMUEL C. PAYSON.

Sworn to and subscribed before me this 28th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

Complainant's counsel offer in evidence a certified copy of the trade-mark registered to the "Elgin National Watch Company," April 11, 1876, No. 2,574, to be marked "Complainant's Exhibit Elgin Original Registration."

Also a certified copy of the trade-mark registered to the "Elgin National Watch Company," November 14, 1882, No. 9,810, the same to be marked "Complainant's Exhibit Second Elgin Registration."

Mr. GEORGE S. PRINDLE recalled.

Q. 468. Are you the same Geo. S. Prindle who has testified before in this case?

A. I am.

Q. 469. Three certificates of registration of the word "Elgin" as the trade-mark of the Elgin National Watch Company have been offered in evidence by certified copies from the Patent Office, and they bear evidence that you or your firm acted as solicitors in procuring them. Will you please state to the court the history of these different registrations, referring particularly to the reasons why different registrations of the same trade-mark were effected at different times, and also to the fact that the class of goods referred to therein is sometimes mentioned as "watches" and sometimes as "watch-movements."

A. The registration of April 11th, 1876, was effected

in due course after the company had adopted the word "Elgin" as a trade-mark. The act of Congress under which such registration was effected was declared unconstitutional by the Supreme Court of the United States, and upon November 14, 1882, the word "Elgin" was re-registered under a new act of Congress which was then in force. The first registration named covered in general terms "watches," while the second registration—probably through mistake—was made to apply to "watch-movements." In 1892, in order that no possible misunderstanding might occur with reference to the claims of the Elgin National Watch Company, the word Elgin was again registered as applying to "watches."

GEORGE S. PRINDLE.

Sworn to and subscribed before me this 28th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

Testimony-in-chief for complainants closed.

Notary's Certificate.

STATE OF ILLINOIS, } ss.
COUNTY OF COOK. }

I, L. A. Gardiner, a Notary Public within and for the County of Cook and State of Illinois, do hereby certify that the foregoing depositions of George Hunter, John M. Cutter, Julius Schnering, Samuel W. Dripps, James L. Rowe, Thomas W. Duncan, John P. Owen, Leo Hettich, Fred B. Thearle, Jr., Louis H. Schafer, George S. Prindle, George E. Hunter, O. C. Hansen, John Schaub, Henry M. Carle, George Weidig and Samuel C. Payson were taken on behalf of the complainant, the Elgin National Watch Company, by consent, before me, at No. 1133 Monadnock Building, in the City of Chicago, in said county, on the 9th, 10th, 11th, 12th, 14th, 15th, 16th and 28th days of September, 1896; that each of said witnesses was by me duly sworn before the commencement of his testimony; that the testimony of said witnesses was written out by myself on the typewriter; that the opposing parties, the Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, were present by their counsel, Mr. Ephraim Banning and Mr. Thomas Banning, during the taking of said testimony; that said testimony was taken at No. 1133 Monadnock Building, Chicago, Illinois, and was commenced at 10 o'clock A. M. on the 9th day of September, 1896, was continued pursuant to adjournment, as above recited, and was concluded on the 28th day of said month; that I not connected by blood or marriage with either of said parties nor interested directly or indirectly in the matter in controversy.

In witness whereof, I have hereunto set my hand and affixed my seal of office, at Chicago, in Cook County, this 28th day of September, 1896.

L. A. GARDINER,
Notary Public.

[SEAL.]

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS.

Elgin National Watch Company,
Complainant,
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham,
Defendants.
} In Equity.

Now come the defendants, by their solicitors, Banning & Banning, and move for an order striking out or suppressing the following portions of the testimony offered in behalf of the complainant, viz.:

The testimony of advertisement by Bloomingdale Brothers, of New York, in the Evening Sun, beginning with the words "I refer to such a sale" in the third line of page 21 and ending with the end of the answer to question 101 on page 22.

The testimony in reference to a letter from Donald Manson & Co., and advertisements said to be inclosed with the letter, beginning with the words "I here produce the letter" near the bottom of page 23 and ending with the end of the answer near the bottom of page 32.

The offering in evidence of the Manson letter, advertisements, etc., beginning near the bottom of page 33 and ending with the answer to question 109 on page 34.

Question and answer 111 on page 34 and ending on page 35.

The testimony in reference to the Elgin Cycle Company, beginning with question 116 on page 36 and ending with the answer to question 119 on page 42.

The testimony in reference to the Elgin Cycle Company, beginning with question 121 on page 43 and ending with the answer on page 45.

The deposition of George S. Prindle in reference to the bicycle advertisement in the Washington Evening Star, beginning on page 99 and ending on page 102.

BANNING & BANNING,
Solicitors for Defendants.

CIRCUIT COURT OF THE UNITED STATES, NORTHERN DISTRICT OF ILLINOIS.

Elgin National Watch Company
vs.
Illinois Watch Case Company *et al.* } In Equity.

Testimony taken on the part of the defendants at the office of Messrs. Banning & Banning, 204 Dearborn street, Chicago, Illinois, this 13th day of April, 1897, before Annie C. Courtenay, a Notary Public in and for Cook County, Illinois, by agreement of parties.

Present: Lysander Hill, Esq., and George S. Prindle on behalf of complainant, and Thomas A. Banning, Esq., on behalf of defendants.

THOMAS F. SHERIDAN, a witness produced, sworn and examined on the part of defendants, in answer to questions by Mr. Banning, deposes and testifies as follows:

Q. 1. State your name, age, residence and occupation.

A. Thomas F. Sheridan; thirty-eight years; Chicago, Illinois; mechanical expert and solicitor of patents.

Q. 2. State whether you know anything about the business of manufacturing and selling watches; and, if so, what experience you have had in that line.

A. In 1882 I entered the employ of the Waterbury Watch Company, and stayed in the business continuously

until the spring of 1892, having been employed by the Seth Thomas Clock Company, of Thomaston, Connecticut, and the Illinois Watch Company, of Springfield, Illinois. I was the mechanical superintendent of the last-named company for a period of five years, having sole charge of the designing and manufacturing of their models, watches and special machinery for the manufacture of watches. During this time I was in constant touch with the agents who sold the movements, and was conversant with the methods of selling and introducing the watch-movements and cases.

Q. 3. State what you know about the City of Elgin, Illinois, as a place at which watches are manufactured, how long you have known of such place, and how the name "Elgin" is understood in the watch trade, if you know.

Objected to as immaterial and incompetent.

A. Elgin is a town where watches are manufactured in large quantities. I have known of it personally as a place where watch-movements are manufactured for a period of sixteen years, and I have always understood the word "Elgin" to have been used geographically as being the place where certain watch-movements were manufactured.

Q. 4. What is the difference between watch-movements and watch-cases?

A. A watch-movement is known as a time-keeping machine or instrument. A watch-case is known as a closure or box to carry the watch-movement in to protect it from injury and from moisture and dust. The watch-movements are manufactured independently of the cases, and are manufactured by different companies. The manufacture of movements requires machinery radically different from the manufacture of watch-cases. They also

require skilled help of different natures, the help trained in a watch-movement factory not being of any use in a case factory—excepting the tool-makers and machinists. The watch-movements are sold to the trade independently, and without any relation whatever to the cases. Watch-movements are interchangeable—that is, a watch-movement of a certain size will fit a case manufactured by any of the several watch-case companies. The watch-case companies sell their product, generally speaking, independent of movements, and they make their cases so that the movements of any of the several movement companies may be fitted therein. The jobbers who sell to retailers buy their movements separately, without any regard to any special kind of case; and they buy their cases separately, without any regard to any special make of movements. The retailers buy from the jobbers, generally speaking, in the same manner. It has been my experience, therefore, that the manufacture and placing of the goods of watch-movements and cases are independent of each other—the purchaser generally choosing his particular style of movement and a case of suitable design in which to carry the same.

Q. 5. What, if anything, did the defendants ever do or offer to do when claim was made against them by the complainant for infringement by use of the word "Elgin"?

Objected to as immaterial and incompetent.

A. On January 2, 1896, acting as attorney for the defendants, I had an interview with Mr. Prindle, attorney, and Mr. Hill, counsel for the complainant, with respect to the claims against the defendants; and they informed me that the defendants must desist from using the word "Elgin" in any form whatsoever on their watch-cases, guarantees, circulars, advertisements, bill-heads

and letter-heads, but that they were willing to let the defendants use the words "Elgin, Illinois," as a date for their letter-heads. I then had an interview with the officers of the defendant corporation, and on the 3rd of January wrote complainant's counsel as follows:

"CHICAGO, January 3, 1896.

"GEORGE S. PRINDLE, ESQ., and
"HON. L. W. HILL,
"Chicago.

"*Gentlemen:* In compliance with my promise to you yesterday, I have had an interview with the Illinois Watch Case Company, of Elgin, Illinois, and delivered to them the ultimatum of your clients, the Elgin National Watch Company, of Chicago, to the effect that they—the I. W. C. Co.—shall at once discontinue the use on goods manufactured by them of the word 'Elgin,' or 'Elgin, Illinois' in any form, or in combination with other words as indicating the place where such goods are made. Further, that they must discontinue at once the use of their trade-marks, 'Elgin Giant,' 'Elgin Tiger' and 'Elgin Commander' on their goods, circulars, guarantees, advertisements of all kinds, bill-heads and letter-heads; but that you are willing to let them date their letters, bill-heads, etc., as of Elgin, and for that purpose only. I further informed them that, unless they decided to discontinue the use of the word 'Elgin' as above indicated, you will immediately begin suit against them and further harass them by interfering with their customers and trade.

"After such consultation, the I. W. C. Co. decided that they could not accede to your wishes, nor obey your ultimatum. They take this position on advice of counsel—that you have no exclusive property rights in the word 'Elgin' or 'Elgin, Illinois,' alone, especially as against parties manufacturing at Elgin; nor in the combined word symbols, 'Elgin Tiger,' 'Elgin Giant' and 'Elgin Commander' as used by them.

"I am further instructed to say to you, so that you may warn your clients, that if they attempt in any way whatever to harass or interfere with the trade of customers of the Illinois Watch Case Company, they will be

held liable and prompt measures invoked to obtain redress.

"I am further instructed to say to you that for the *sake of peace*—but not recognizing in any way your right to the word, or prejudicing the interests of the I. W. C. Co.—that they, the I. W. C. Co., are willing to forego the use of the word 'Elgin' alone, as they now use it on the inner side of the back caps of their cases.

"If I have not stated the case correctly—as outlined above to the I. W. C. Co.—please inform me of any errors and I will immediately correct them and notify the officers of said company at once.

"Yours very truly,

"THOMAS F. SHERIDAN."

Q. 6. You may state, if you know, how parties or companies manufacturing watch-movements usually mark their goods, and also how parties or companies manufacturing watch-cases usually mark their goods.

Objected to as incompetent, it not being shown that companies manufacturing watch-movements, or companies manufacturing watch-cases, have, in common with each other, any usual or common way of marking their goods, or that this witness knows anything more about the subject than is known by any ordinary person in the community.

A. I have seen the product of every watch-movement company in this country, and am familiar with nearly every grade of watch-movement manufactured in this country between the years of 1882 and 1892, as I made it my business to collect cuts and descriptions of the same and to obtain, wherever possible, movements for the purposes of inspection; and in every instance that I now recall the movements had the name of the company manufacturing the same engraved or stamped on the back, on what is known as the top plate, and also had the place at which the manufactory was located stamped or

engraved on the top plate. The dials usually bore the name of the company, in either its full or abbreviated form. The Dueber Watch Case Company marked the inside of their cases with the name of the company, and in some of the cases with the place of manufacture. All of the watch-cases that I have ever seen—and I have seen large quantities of what is known as filled cases—contained guarantees inside of their back case, on which the name of the company was printed or engraved and also the place of manufacture, so that the purchaser could tell whose case he was purchasing, and to whom he could look for the purpose of good faith as a guarantor.

Q. 7. You have, in answer to Q. 5, stated what the defendants were willing to do in order to avoid the harassment of a suit. What response did you get, if any, to their proposition in this regard?

A. I never received any response.

Q. 8. Name, if you can, some other towns or cities which have become identified with the manufacture of watch-movements or cases.

A. Waltham, Mass.; Springfield, Illinois; Canton, Ohio; Brooklyn, New York; and Philadelphia, Pennsylvania.

Q. 9. How have the names of those towns and cities become associated with the companies manufacturing there?

Objected to as immaterial and irrelevant.

A. Geographically—as the places at which the companies were located.

Q. 10. In the testimony in chief, counsel for complainant offered in evidence certified copies of the registry of the defendants' trade-marks "Elgin Giant," "Elgin Tiger" and "Elgin Commander." State whether these

names have been registered as trade-marks, and, if so, by whom?

Objected to as incompetent and secondary.

A. The words "Elgin Tiger" and "Elgin Giant" are registered in the Patent Office by me, acting as attorney for M. C. Eppenstein & Co., of Chicago, Illinois, and in one instance for the Illinois Watch Case Company, of Elgin, Illinois.

Q. 11. You may state whether the certificate for the registry of the words "Elgin Commander" has yet been issued.

A. It has not.

Q. 12. Do you know how the complainant, or its counsel, knew that an application was pending for the registration of the words "Elgin Commander"?

A. I do not.

Q. 13. Is that application still pending in the Office?

A. It is.

Cross-Examination by Mr. Hill.

X Q. 14. Are you the Mr. Sheridan whose name appears in the firm name of Banning, Banning & Sheridan, attorneys at law and solicitors of patents, 204 Dearborn street, Chicago?

A. I am.

X Q. 15. How long have you been connected with that firm as a copartner?

A. I have been connected with them in the business of soliciting patents only since about January 1, 1893.

X Q. 16. Were you in their employ before that time?

A. I was not. I had desk room in their office from about the middle of March, 1892, until I took an interest in their soliciting business, about January 1, 1893.

X Q. 17. In what capacity were you employed by the

Waterbury Watch Company, and how long were you in their employ?

A. I was draftsman and designer, assisting Mr. Buck, the model-maker, also Mr. Hart, their superintendent. I was there about two years, or until about June 1, 1883.

X Q. 18. What did you do next after leaving their employ?

A. I left the Waterbury Company because I had been engaged by the Seth Thomas Clock Company, of Thomaston, Connecticut, whose employ I entered immediately as draftsman, designer and assistant model-maker.

X Q. 19. How long did you remain in the employ of the Seth Thomas Clock Company?

A. I remained in the employ of the Seth Thomas Clock Company until I was engaged by the Illinois Watch Company, of Springfield, Illinois, on or about the middle of February, 1887.

X Q. 20. And then you were in the employ of the Illinois Watch Company until the spring of 1892, were you?

A. I was.

X Q. 21. And after that you went immediately into Mr. Banning's office, did you?

A. I did.

X Q. 22. In all your employment by the Waterbury Watch Company, the Seth Thomas Clock Company and the Illinois Watch Company, you were employed as a draftsman and mechanic, and not as a salesman, were you?

A. I was.

X Q. 23. Have you ever been personally connected with the business of selling or dealing in watch-movements or watch-cases?

A. Only so far as instructing the selling agents of the Illinois Watch Company was concerned; but I have been

out among the jobbers with our agents—in a missionary capacity—have met large numbers of jobbers and retailers at the factory, and consulted with them on all topics relating to trade, both as to the manner of selling goods and placing them, as well as the peculiar grades which it was desirable to manufacture. Personally, however, I never sold a bill of goods; but I was well acquainted with the methods of procedure in selling goods, as any man who is mechanical superintendent of a factory must necessarily be.

All that part of the above answer after the word "concerned" is objected to by complainant's counsel as not responsive but volunteered.

X Q. 24. Have you ever had anything to do with the manufacture of watch-cases?

A. Only so far as making standards of sizes is concerned. Each manufacturer of watch-movements makes what is known as a "case block," which he sends to each manufacturer of watch-cases, so that they may see that their watch-cases are made of standard sizes to fit standard movements. I have further been acquainted with the manufacture of watch-cases, in that I have consulted with superintendents or manufacturers of the same regarding the particular sizes of movements. I have also been consulted in a mechanical capacity by manufacturers of cases as to best methods to pursue in their manufacture and sizes thereof; this from a mechanical standpoint, and as a mechanical engineer only.

X Q. 25. Have you ever been engaged personally in the business of selling watch-cases?

A. I have not; but I have had watch-case manufacturers approach me for the purpose of trying to sell cases to me for the company I was employed with.

X Q. 26. Have you ever lived or been employed in the City of Elgin, Illinois?

A. I have not, but I have been there and visited there a number of times.

X Q. 27. When were you there for the first time?

A. In 1887 or 1888—I am not certain which year.

X Q. 28. How many times have you been there?

A. Probably twelve or fifteen times.

X Q. 29. How much time have you spent there in all?

A. I should say in the neighborhood of three weeks would cover it all.

X Q. 30. How long were you there at the one time?

A. Three days.

X Q. 31. You state that Elgin is a town where watches are manufactured in large quantities; by whom are they so manufactured?

A. By the Elgin National Watch Company, who manufactures the movements, and by the Illinois Watch Case Company, who manufactures the cases.

X Q. 32. How long has the Illinois Watch Case Company been manufacturing watch-cases at Elgin, Illinois?

A. I think they began manufacturing there about May of 1890.

X Q. 33. Do you know whether they had been manufacturing watch-cases somewhere else before they went to Elgin?

A. I think not. I think their predecessors, M. C. Eppenstein & Co., manufactured watches at Chicago; but I don't think the Illinois Watch Case Company was incorporated until they went to Elgin, or just immediately preceding it, though of this I am not certain.

X Q. 34. Does M. C. Eppenstein & Co. manufacture watch-cases at the present time?

A. I don't know.

X Q. 35. Is that firm still engaged in business as dealers in watch-cases?

A. They are engaged in business as jobbers—I believe as jobbers and dealers—selling all kinds of watch-cases and movements.

X Q. 36. Do you know whether or not they handle the whole product of the Illinois Watch Case Company?

A. I don't know.

X Q. 37. Do you know whether or not they went out of the business of manufacturing watch-cases at the time when the Illinois Watch Case Company entered upon that business?

A. I do not, or at least I don't remember if I ever did.

X Q. 38. Do you know their business relations with the Illinois Watch Case Company?

A. I do not.

X Q. 39. Do you know whether Mr. Max C. Eppenstein is an officer or director of the Illinois Watch Case Company?

A. I could not tell, because I don't know definitely. At one time I believe he was, but whether he is now or not I don't know.

X Q. 40. By what name are the watch-movements made by the Elgin National Watch Company generally known throughout the world?

The question is objected to, because it is not shown that the witness knows by what name they are known throughout the world.

Complainant's counsel calls the attention of the court to the third interrogatory propounded to this witness by defendants' counsel.

A. I don't know. I only know that Elgin is a place for the manufacture of watches, and as an individual I

have called them Elgin movements, as I have called the movements of the Illinois concern at Springfield Springfield movements.

X Q. 41. Don't you know that people generally call the watches made by the Elgin National Watch Company "Elgin watches"?

A. No; I have heard them called "Elgin movements," but not "Elgin watches." The trade speaks of them as "Elgin movements," and in ordering them they order them as they order movements of other companies under the head of "movements." Of people generally I have no knowledge as to what they call them.

X Q. 42. Then I suppose you never heard of such a thing as an Elgin watch, did you?

A. I may have heard of it, but I never saw one.

X Q. 43. You say "you may have heard of it;" did you ever hear of it?

A. I don't recollect now.

X Q. 44. Then you mean to tell the court that you don't recollect whether you ever heard of such a thing as an Elgin watch, do you?

A. I couldn't specify an instance, and I am testifying to the best of my knowledge and belief. I have heard them spoken of largely as Elgin movements; and, being in the business of manufacturing movements, would naturally classify them as such, and not as a complete watch. If any one ever spoke to me about them as "Elgin watches," it probably made no impression on me, as I was probably under the impression that they were miscalling the same, and therefore paid no attention to it. There is no doubt, however, but what I have heard the term used, but I couldn't specify either the place or time.

X Q. 45. And you can't say whether or not watches consisting of a watch-case enclosing a movement made by

the Elgin National Watch Company are or are not generally known to the public by name of "Elgin watches," can you?

A. I cannot. I know that when such a combination is shown and as they have been shown me in watches, that they were specified to me as a watch containing an Elgin movement; and in buying a watch for my wife I specified that it must be a watch containing an Elgin 0-size movement; and jobbers in ordering a watch will order the Illinois movements under the head of "movements."

X Q. 46. I am not asking you about yourself, or about the jobbers or retailers in the watch trade, but about the great army of buyers and users, and other people constituting what is known as the public; and I understand that you can't give me any information as to what the public calls, or have called for the last twenty years, watches containing movements made by the Elgin National Watch Company; am I correct in this?

A. You are.

Re-Direct Examination by Mr. Banning.

R-D. Q. 47. What is the firm of Banning & Banning & Sheridan?

A. It is a copartnership for the prosecution of applications for letters patent of the United States and foreign countries.

R-D. Q. 48. What is the firm of Banning & Banning?

A. It is a firm for the prosecution and defense of actions founded on patents, or, in other words, patent causes.

R-D. Q. 49. Are you a member of the legal firm of Banning & Banning?

A. I am not, and have no interest in it.

THOMAS F. SHERIDAN.

Adjourned till Wednesday, April 14, 1897, at 10 o'clock A. M.

Chicago, April 14, 1897. Parties met pursuant to adjournment. Present as before.

THOMAS W. DUNCAN, a witness produced, sworn and examined on the part of defendants, in answer to questions by Mr. Banning, deposes and testifies as follows:

Q. 1. State your name, age, residence and occupation.

A. Thomas W. Duncan; thirty-eight years; Elgin, Illinois. I am president of the Illinois Watch Case Company.

Q. 2. Are you one of the defendants in this case?

A. Yes, sir.

Q. 3. Where is the Illinois Watch Case Company located?

A. At Elgin, Illinois.

Q. 4. Is its factory and place of business there?

A. It is.

Q. 5. What does the Illinois Watch Case Company manufacture and sell?

A. Watch-cases.

Q. 6. Has it ever manufactured or sold watch-movements?

A. No, sir.

Q. 7. Do you know what the complainant company manufactures and sells?

A. Yes, sir; watch-movements.

Q. 8. Does it manufacture or sell watch-cases?

A. No, sir.

Q. 9. When did your company—by which I shall always mean the Illinois Watch Case Company—locate at the City of Elgin, Illinois?

A. May, 1890.

Q. 10. Where had been its place of business prior to May, 1890?

A. Chicago, Illinois.

Q. 11. Did it own its factory at Chicago?

A. It did not.

Q. 12. What inducement, if any, was offered your company to locate at the City of Elgin?

A. The citizens of Elgin supplied us with the building and grounds suitable to our requirements.

Q. 13. Do you mean that such building and grounds were donated to your company if it would locate at Elgin?

A. Yes, sir.

Q. 14. About how many employés does your company have in manufacturing watch-cases?

A. About 250.

Q. 15. The complainant has taken some testimony in reference to a concern called the Elgin Cycle Company; is that concern a distinct and separate company from the Illinois Watch Case Company?

A. It is.

Q. 16. Does the Illinois Watch Case Company manufacture bicycles, or has it ever?

A. No, sir.

Q. 17. What does it manufacture?

A. Watch-cases.

Q. 18. What does the Elgin Cycle Company manufacture?

A. Bicycles.

Q. 19. Has it ever manufactured watch-cases?

A. No, sir.

Q. 20. How does the Illinois Watch Case Company dispose of the watch-cases manufactured by it?

A. To the wholesale jewelers.

Q. 21. Does it sell them outright?

A. Yes, sir.

Q. 22. After it has sold its watch-cases to the wholesale jewelers, what further control does it have over them, if any?

A. No control whatever.

Q. 23. The complainant, in its testimony in chief, has offered in evidence several advertisements appearing in the Washington Star and other papers; how far, if at all, were such advertisements made with the knowledge or authority of the Illinois Watch Case Company or the other defendants?

A. Entirely without their knowledge or authority.

Q. 24. Have the defendants ever sold watch-movements arranged in the cases manufactured by them?

A. No; we sell our cases separately.

Q. 25. Do you know whether the complainant has ever manufactured watch-movements which did not contain the name "Elgin" on them, or in connection with them?

A. Yes, sir; it has.

Q. 26. What words did such movements have on them, if you know?

A. Atlas Watch Company, Chicago.

Q. 27. Have the defendants ever manufactured watch-cases and shipped them abroad—that is, to other countries—or sold them to Indian tribes, on which or in connection with which in any way the word "Elgin" was used?

A. No, sir.

Q. 28. Have the defendants ever used the word "Elgin" alone, disconnected from other words, on or in connection with watch-cases manufactured or sold by them?

A. No, sir.

Q. 29. You say that your company has sold the watch-cases manufactured by it to wholesale jewelers. Where have such jewelers been located?

A. Chicago, St. Louis, Cincinnati, Pittsburg, Philadelphia, New York, Providence, Boston, Albany, Syracuse, Rochester, Buffalo, Cleveland, Toledo, Detroit, Minneapolis, St. Paul, Omaha, Lincoln, St. Joseph, Denver, San Francisco and New Orleans. That is all I think of just now.

Q. 30. Were the purchasers of your watch-cases all located in this country—the United States?

A. Yes, sir.

Q. 31. State, if you know, how the complainant puts up its watch-movements.

A. In tin boxes.

Q. 32. A box for each movement?

A. Yes, sir.

Q. 33. Has the complainant, according to your knowledge, ever sold watch-movements and watch-cases combined or arranged together, ready for use?

A. Not to my knowledge.

Q. 34. Look at these three exhibits offered in evidence by the complainant, marked "Elgin Tiger," "Elgin Giant" and "Elgin Commander," and state what the paper arranged in the back of the case is.

A. It is a guarantee for the protection of the purchaser.

Q. 35. Is one of these guarantee certificates arranged in the back of each of the cases sold by your company?

A. On all cases which are guaranteed.

Q. 36. I notice the name of your company on each of these guarantee certificates. Has such name always been used in connection with its guarantee certificates?

A. Yes, sir.

Q. 37. If the words "Elgin, Illinois," which I find on each of these guarantee certificates were omitted, how would a purchaser of a watch containing one of your watch-cases know where to find your company to call upon you for a fulfillment of the guarantee?

Objected to as incompetent.

A. They would have no means of knowing by whom it was manufactured.

Q. 38. I notice in the watch-case marked "Elgin Commander" the words "Guaranteed Elgin 14 K, 20 years," stamped on the inside of the back cap. Please explain what those words mean, as used in the trade.

A. That it is a 14-karat gold-filled watch-case, and guaranteed to wear twenty years.

Q. 39. Is your company making any watch-cases like that at the present time?

Objected to as immaterial.

A. No, sir.

Q. 40. About how many did it mark in that way?

Same objection.

A. I couldn't tell you that.

Q. 41. I do not care for the exact number, but you may state whether many or few were marked that way, if you can.

Same objection.

A. Not a very large quantity.

Q. 42. When did your company cease to mark cases in that way?

Same objection.

A. Several months ago.

Q. 43. Before this suit was commenced?

Same objection.

A. No, sir.

Q. 44. Have the cases so marked been sold by the defendants outside of this country or to Indian tribes?

A. Not by us.

Q. 45. When your company did mark cases like this Elgin Commander case, was the case accompanied by one of your guarantee certificates, as in this exhibit?

A. Yes, sir.

Q. 46. I notice on the inside of this Elgin Commander cover the words "Elgin Commander" stamped in the metal; have those words also been used where you have stamped the inside of the cap, as in this exhibit?

A. The words "Elgin Commander" have always been stamped on the back cover of every case of that grade.

Q. 47. Have the defendants ever represented in any way that the watch-cases manufactured by the Illinois Watch Case Company were the manufacture or goods of the complainant or of any other person, firm or company?

Objected to as incompetent and leading.

A. No, sir.

Cross-Examination by Complainant's Counsel.

X Q. 48. How long have you been president of the Illinois Watch Case Company?

A. Four or five years.

X Q. 49. Who was president of that company before you?

A. M. C. Eppenstein.

X Q. 50. Max C. Eppenstein, of Chicago?

A. Yes, sir.

X Q. 51. How long was he president of it?

A. Two or three years.

X Q. 52. Is he one of its officers or directors now?

A. He is a director.

X Q. 53. You say that the Illinois Watch Case Company, prior to May, 1890, had its place of business in Chicago, Illinois. Where was that place of business?

A. Clinton street.

X Q. 54. What number?

A. I think it was 48 N. Clinton, if I remember.

X Q. 55. Did it rent the place?

A. Yes, sir.

X Q. 56. From whom?

A. Mr. Blatchford.

X Q. 57. How long did it carry on business in the City of Chicago, Illinois, before it moved to Elgin?

A. About a year and a half.

X Q. 58. You state that the Elgin Cycle Company is a distinct and separate company from the Illinois Watch Case Company. How long has it been incorporated?

A. Since 1895.

X Q. 59. Did it do business before it was incorporated?

A. No, sir.

X Q. 60. Who is its president?

A. I am.

X Q. 61. How long have you been its president?

A. I have always been its president.

X Q. 62. Is Mr. Eppenstein one of its officers or directors?

A. He is a director.

X Q. 63. How long has he been a director?

A. He has always been a director.

Counsel for defendants objects to the foregoing and all questions in reference to the Elgin Cycle Company as incompetent, irrelevant and immaterial. This objection is intended to be made once for all.

X Q. 64. What is the capital stock of the Illinois Watch Case Company?

A. Two hundred and fifty thousand dollars.

X Q. 65. Name five of its principal stockholders.

A. There are not five principal stockholders.

X Q. 66. How many stockholders has it?

A. Is that a question to be answered, Mr. Banning?

By Mr. Banning: You may exercise your pleasure about answering it.

A. Answer refused.

X Q. 67. Name its principal stockholders.

A. Answer refused.

X Q. 68. What is the capital stock of the Elgin Cycle Company?

A. One hundred thousand dollars.

X Q. 69. Name five of its principal stockholders.

A. Answer refused.

X Q. 70. Name its principal stockholder.

A. Answer refused.

X Q. 71. Is it not a fact that the persons who own the majority of the stock and control the business of the Illinois Watch Case Company are the same persons who own the majority of the stock and control the business of the Elgin Cycle Company?

A. Answer refused.

X Q. 72. Does the Elgin Cycle Company do business in a building at Elgin which is an extension of the building in which the Illinois Watch Case Company carries on its business?

A. It does.

X Q. 73. Who built that extension?

A. Answer refused.

X Q. 74. Will you tell me why you refuse to state to the court whether or not the same persons who own a ma-

jority of the stock and control the business of the Illinois Watch Case Company are the persons who own the majority of the stock and control the business of the Elgin Cycle Company?

A. I refuse to answer the question.

X Q. 75. Is it not a fact that both of those companies are owned and managed by the same persons?

A. Answer refused.

X Q. 76. Why do you refuse to answer my last question?

A. Answer still refused.

X Q. 77. Who furnished the capital with which the Elgin Cycle Company established and carries on its business?

A. Answer refused.

X Q. 78. Is it not a fact that those two so-called companies are practically but branches or departments of a single concern which have been incorporated under different names?

A. Answer refused.

X Q. 79. What is the name of the business firm of Mr. Max C. Eppenstein here in Chicago?

A. M. C. Eppenstein & Co.

X Q. 80. Name the wholesale watch dealers or jobbers here in Chicago to whom the Illinois Watch Company directly sells its watch-cases.

A. Otto Young & Co., Lapp & Flersheim, Lewis Manheimer, M. C. Eppenstein & Co., A. C. Becken & Co., Orr & Evans, and a number of others which I can't recall.

X Q. 81. Which of those concerns handles the larger number of your watch-cases?

A. M. C. Eppenstein & Co.

X Q. 82. To what wholesale jewelers in Buffalo, De-

troit, Boston and New York does your Illinois Watch Case Company directly sell its watch-cases?

A. Morrill Bros. & Co., Boston; Smith, Patterson & Co., Boston; Sherwin & Clark, Boston; J. C. Sawyer & Co., Boston; H. Keyster & Co., Detroit. I can't recall who there is in Buffalo. Sam Stern & Co., New York; Leon Hirsch & Co., New York; Byron L. Strasburger & Co., New York; Hipp Didesheim, A. M. Bacharach & Co., R. R. Vogel, Arthur J. Kahn & Co., all of New York. That is all I think of just now.

X Q. 83. Can you complete the list by giving me this afternoon the names of the wholesale jewelers, or their firms, in Detroit and Buffalo to whom your company sells its watch-cases directly?

A. I gave Detroit; I think that is the only one. I don't believe we have a customer in Buffalo now; we had one, but I think he has gone out of business.

X Q. 84. What is the name of the Buffalo party to whom you refer in your last answer?

A. Stadtlinger; I don't remember his first name.

X Q. 85. How long ago was he dealing in your watch-cases at Buffalo?

A. I don't remember.

X Q. 86. You state that after your company has sold its watch-cases to the wholesale jewelers it has no further control over them; do you know where the wholesale jewelers sell your watch-cases?

A. No, sir.

X Q. 87. Then you don't know whether your watch-cases (and by your watch-cases I always mean the watch-cases manufactured by the Illinois Watch Case Company), after they leave your hands, go into foreign trade, or trade among the Indian tribes or not, do you?

A. No, sir.

X Q. 88. To what wholesale jewelers in San Francisco, Cal., does your company sell directly?

A. George Greenschweig & Co.

THOMAS W. DUNCAN.

Counsel for defendant offers in evidence certificate of registry of the trade-mark "Lady Elgin," No. 21,463, registered July 19, 1892; certificate of registry of the trade-mark "Elgin Watch Co.," No. 21,465, registered July 19, 1892; certificate of registry of the trade-mark "Elgin, Ill's.," No. 21,461, registered July 19, 1892; and certificate of registry of the trade-mark "Elgin National Watch Co.," No. 21,464, registered July 19, 1892.

Counsel also offers in evidence certified copies of the file-wrappers and contents in the matter of the registration of the trade-mark "Elgin," Nos. 9,810, of November 14, 1882, and 21,462, of July 19, 1892.

Complainant's counsel object to the introduction of the several exhibits just put in evidence, on the ground that they are immaterial and irrelevant.

Recess for lunch.

Upon reassembling an adjournment was taken until 10 o'clock A. M. Monday, April 26, 1897, but with the understanding that a further adjournment will be noted in case Mr. Thomas A. Banning is still detained in New York on account of his engagements there.

Chicago, April 26, 1897, 10 o'clock A. M. Parties met pursuant to adjournment. Present as before.

THOMAS W. DUNCAN, a witness recalled on behalf of the defendants, in answer to questions by Mr. Banning, deposes and testifies as follows:

Q. 1. You have already been examined as a witness in this case, have you not?

A. I have.

Q. 2. In answer to Q. 27 of your other deposition you have stated that the defendant had not manufactured watch-cases and shipped them abroad, and in answer to Q. 30 you stated that the purchasers of your watch-cases were all located in the United States. Since the adjournment was taken, have you made any examination of the books of the defendant to verify your recollection in reference to this matter?

A. I have.

Q. 3. If you have any addition or modification to make to the answers to which I have called your attention, please do so, making any statement necessary to the exact facts as you found them on examination of the books kept by your company.

A. I find the Illinois Watch Case Company has sold watch-cases to parties outside of the United States.

Q. 4. In how many instances do you find that has been the case?

A. In a few instances.

Q. 5. In those instances, was the word "Elgin" used alone or in connection with other words?

Objected to as calling for secondary evidence, unless the witness shall answer from his own memory

alone and without depending in any way upon the evidence of the books. If the contents or statements of the books are to be used, the complainants will insist that the books shall be produced.

By Mr. Banning: In answering the question, state from your own knowledge and recollection.

A. The word "Elgin" was not used alone.

Q. 6. In answering questions 25 and 26 you have stated that the complainant had manufactured watch-movements which did not contain the name "Elgin" on them or in connection with them, but contained the words "Atlas Watch Company, Chicago." Please state the name of some party in Chicago—if you know—who procures watch-movements from the complainant so marked.

A. L. Manheimer, Columbus Building, Chicago.

Cross-Examination de bene esse by Complainant's Counsel.

X Q. 7. In the watch-cases sold by the Illinois Watch Case Company to parties in foreign countries what words were used additional to the word "Elgin"—what was the whole inscription?

A. "Elgin Tiger," "Elgin Giant" and "Elgin Commander."

X Q. 8. Do you clearly remember the fact that these words were used on those cases?

A. To the best of my knowledge, they were.

X Q. 9. Did you get that knowledge from the books of the company or from your own memory?

A. From both.

X Q. 10. How happens it that you did not remember the fact, and did not even remember that your company had sold watches abroad, when you testified here a week or two ago, but now, after examining the books, recollect

it all of your own memory and without relying upon the books?

A. Examining the books refreshed my memory.

X Q. 11. Were you personally aware of those foreign transactions at the time when they occurred?

A. I was.

X Q. 12. What did you personally have to do with the transaction at the time?

A. I OK'd the filling of the order.

X Q. 13. Now that you find you were wrong in the recollection that you have, but did not have of these particular transactions when you gave your last deposition, I will ask if there are any other things concerning which you have testified in this case in regard to which you have since ascertained that your recollection at the time was unreliable?

A. Nothing else.

X Q. 14. How about the matter of the Elgin Cycle Company being a branch department of the Illinois Watch Case Company—is it still your recollection that it is not and has never been?

A. Answer refused.

X Q. 15. I show you a copy of a printed publication styled the "Elgin Daily News," dated December 19, 1896, at Elgin, Illinois, numbered 298, it appearing to be a printed newspaper containing twenty-four pages. I call your attention particularly to an article appearing on page 16 of that issue, which article is as follows:

"THE ILLINOIS WATCH CASE CO.

"The Illinois Watch Case Company, situated on Dundee and Slade Avenues, is one of Elgin's latest and most successful industries They employ nearly 300 operatives in their various departments. The product consists of gold-filled watch cases of all

grades and styles, intended to meet all requirements, from the highest grade of jewelled case to the ordinary engraved kind. These watch cases are sold throughout the United States and Canada by the leading wholesale jewellers.

"The Elgin Cycle Company is a branch of the above company, devoted to the manufacture of high grade bicycles. At present about 100 men are kept busy preparing for a very extensive '97 business. Judging by contracts already closed, the demand for Elgin King bicycles will far exceed the capacity of the concern, hence an extension of their plant is a possibility of the near future."

I also call your attention to a cut or picture at the bottom of the same page purporting to represent the "Plant of The Illinois Watch Case Company." What I wish to inquire now is, whether you knew of this publication when you testified here on April 14, 1897, and, if you did, how long you had known of it?

A. Answer refused.

By Mr. Banning: I think you had better tell, Mr. Duncan, what you know about that, although I wish at the same time to object to the question as incompetent, immaterial and irrelevant, and as having no bearing whatever on the issues involved in this case.

A. The building represented here is the Illinois Watch Case Company. I can't recall exactly, as this would come under the advertising, which I do not attend to.

X Q. 16. Don't you know whether you had knowledge of that publication or advertisement before the 14th day of April, when you last testified here?

A. I don't try to memorize this kind of matter.

Answer objected to by Mr. Hill as not responsive, and question repeated.

A. I have no further answer to make.

X Q. 17. That publication was an advertisement in-

serted in the Elgin Daily News of December 19, 1896, was it not?

A. It may have been.

X Q. 18. Don't you know whether it was or not?

A. I refuse to answer.

X Q. 19. Has it been paid for yet?

By Mr. Banning: This line of questioning is objected to as irrelevant, incompetent and immaterial, and as in no way bearing upon the issues involved in this case.

A. Answer refused.

X Q. 20. Did you at the time know of the agreement or arrangement with the Elgin Daily News for its insertion?

A. Answer refused.

X Q. 21. Who had charge of the advertising business of the Illinois Watch Case Company during the months of December, 1896, and January, 1897?

A. Answer refused.

X Q. 22. Was not the cut or picture which appears at the bottom of page 16 of said newspaper, and is there designated as "Plant of the Illinois Watch Case Company" made from a photograph furnished to the newspaper or its agent by the Illinois Watch Case Company, or by yourself, as its president?

A. Answer refused.

X Q. 23. Did your company, or did you, as its president, furnish the Elgin Daily News people with a photograph or cut of your factory for the purpose of that publication?

A. Answer refused.

X Q. 24. Did the Illinois Watch Case Company, or you, as its president, furnish the Elgin Daily News peo-

ple with the information which appears in the article in question?

A. Answer refused.

Complainant's counsel state that, as the witness refuses to reply to interrogatories, they here close this cross-examination, but offer in evidence, to be marked "Complainant's Exhibit Elgin Daily News Article," the copy of the Elgin Daily News, dated December 19, 1896, which has been referred to in the above examination. The particular matter to be used as evidence is the title and date of the paper, and the article on page 16 thereof, which has been above quoted on the record, and the picture at the bottom of page 16 hereinabove referred to. In printing the record it will not be necessary to print anything more than these three things; in fact, it will be unnecessary to reprint the cut or picture, as the latter will appear in the exhibit and can be examined there by the court.

By Mr. Banning: Counsel for defendants objects to the exhibit above offered in evidence as incompetent, irrelevant, immaterial and as a useless encumbering of the record.

Thomas W. Duncan.

Notary's Certificate.

I, Annie C. Courtenay, a Notary Public in and for the County of Cook, in the State of Illinois, hereby certify that all the proceedings aforesaid were had as stated in the cause named in the caption hereto; that on the 13th day of April, 1897, and subsequent days mentioned in the foregoing deposition, I was attended by Mr. Lysander Hill and Mr. George S. Prindle, counsel for complainant, and Mr. Thomas A. Banning, counsel for defendants, and by the witnesses Thomas F. Sheridan and Thomas W. Duncan; that before giving their depositions the said witnesses were by me severally duly sworn to testify the truth, the whole truth, and nothing but the truth in said cause, and that their depositions were taken down by me in typewriting from their statements and afterwards read over and subscribed by them as and for their depositions in said cause; and that I am not related to or of counsel for either of said parties, or in any way interested in the result of said suit.

In witness whereof I have hereunto set my hand and affixed my notarial seal this 11th day of May, 1897.

ANNIE C. COURTENAY,
Notary Public.

[SEAL.]

File-Wrapper and Contents of Trade-Mark No. 9,810.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

To all person to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this Office of the file-wrapper and contents in the matter of the Trade-Mark registered by Elgin National Watch Company, November 14, 1882, number 9,810, for Watch-Movements.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 23d [SEAL.] day of December, in the year of our Lord one thousand eight hundred and ninety-six, and of the Independence of the United States of America the one hundred and twenty-first.

S. T. FISHER,
Acting Commissioner of Patents.

Trade Mark registered April 11th 1876–
No 3,574–

PETITION FOR REGISTRATION OF TRADE-MARK.

To the Commissioner of Patents.

Your petitioner, the "Elgin National Watch Company" a corporation organized under the laws of the State of Illinois, Respectfully represents:—that it is domiciled at Chicago, Cook County, State of Illinois, and is engaged in the manufacture of Watches at Elgin, County of Kane, State of Illinois, and that, as said company it is entitled to the exclusive use upon the class of

goods manufactured by it, of a trade-Mark described in the annexed specification and accompanying fac-simile.

It therefore prays, that said trade-mark may be registered and recorded in the United States Patent Office, under the law in such case made and provided.

Your petitioner would farther pray that George S. Prindle, of Washington D. C., may be recognized as its true and lawful attorney, for it and in its name to perform each and every act necessary in the premises.

ELGIN NATIONAL WATCH CO.,
by T. M AVERY President of said Company.

STATEMENT.

To all whom it may concern:—

Be it known, that the Elgin National Watch Comapny, a corporation created under the laws of the State of Illinois, and doing business at Chicago, in the County of Cook, and State of Illinois, has adopted for its use a Trade-Mark, for Watches, of which the following is a full, clear and exact description.

Said Trade-Mark consists of the word

"Elgin,"

and, as a purely arbitrary symbol, is used to designate particular classes or styles of watches, manufactured by said corporation.

This Trade-Mark is affixed to the plate or plates, or to the dial of the Watch, by stamping, engraving, or in any other well known manner, and is also used in circulars, illustrated catalogues, labels, brands, etc., or in any well known manner, for the purpose of advertising the company's particular classes of goods.

This Trade-Mark has been used in the business of said company for ~~seven years and two months last past.~~

In testimony whereof, said company hereunto affixes its seal, this 11 day of April, A. D., 1881.

ELGIN NAT WATCH Co

(Company Seal.) By T. M AVERY President of said Co

Witnesses.

OVERTON S. MELDRAM.

LUTHER S. GREEN-

DECLARATION.

COUNTY OF COOK } ss:-
STATE OF ILLINOIS }

Thomas M. Avery being duly sworn, deposes and says, that he is an officer of the Elgin National Watch company before named; that he verily believes that the foregoing statement is true; that said company has at this time a right to the use of the trade-mark therein described, that no other person, firm or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used in commerce with, Great Britain, France, Belgium, Austria, Germany and Russia, that the description and fac-similes presented for record truly represent the trade-mark sought to be registered, and that he is a citizen of the United States.

Sworn before me, this 11 day of April, A. D., 1881.

JOHN R FLOYD

Notary Public

(Notarial Seal.) for Cook County Illinois

[Endorsed]: 19. 12845. Petition of Elgin National Watch Co., for Registration of Trade-Mark "Elgin." U. S. Patent Office. Apr 29 1881.

To the Commissioner of Patents.

In the matter of the application of the Elgin National Watch Co., for Registration of Trade-Mark.

"Elgin,"

filed April 28" 1881. I hereby amend the specification by erasing word "watches" from 10" line and inserting the words "watch movements,"

I farther amend by erasing the word "watches" from 15" line and inserting the words "watch movements,"

I farther amend by inserting after line 16, the following:–

"The class of goods to which the trade-mark is appropriated is time keeping mechanism and the particular goods is watch movements."

Respectfully,

GEO. S. PRINDLE,

Atty.

[Endorsed]: 1. 19. 12845. May 7/81. Prelim. Amdt. "A." Elgin National Watch Co. U. S. Patent Office. May 7 1881.

Room No. 221.
All communications should be addressed to
"The Commissioner of Patents,
Washington, D. C."

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE,

Cpd WASHINGTON, D. C., May 9, 1881.

ELGIN NATIONAL WATCH CO.,
Care Geo. S. Prindle,
Present.

Please find below a copy of a communication from the

EXAMINER OF TRADE-MARKS regarding your trade-mark application, filed April 29, 1881

Very respectfully,

E M MARBLE

Case No. 12,845. Commissioner of Patents.

The same objections as pointed out in official letter in Case No. 12,839, are found to apply to the above entitled application.

The case is rejected.

D. CLARKE, A. Ex. F. A. SEELY, Examiner.

[Endorsed]: 2. 19. 12845. May 9/81. Rejection. Elgin National Watch Co.

To the Commissioner of Patents.

In the matter of the application of the Elgin National Watch Co., for Registration of Trade-Mark,–

"Elgin,"

filed April 28" 1881.–Office No 12,845.–I hereby amend specification, by erasing the words "seven years and two months." from 24 line, and inserting in place thereof the words "thirteen years last past."

June 2/81 Amdt

This trade-mark was registered upon the 11th. day of April, 1876, by the same Co., which now asks registration under the new law.

With regard to the geographically descriptive nature of the matter sought to be registered, I would invite attention to the enclosed affidavit made by the President of the company, which shows that the public have adopted and applied the name "Elgin" in some form to the watches manufactured by said Co., and that such name has represented to the trade and to the public generally

for many years the movements produced by said Co. To now refuse registration and to permit others to palm off inferior grades of movements under the name in question would be to inflict great injury upon the public, as well as upon your petitioners who, from long and undisturbed use of said name have acquired rights which are valuable both to themselves and to the public.

Respectfully
GEO. S. PRINDLE,
Attorney.

[Endorsed]: 3. 19. 12845. June 2/81. Amdt. Elgin National Watch Co. U. S. Patent Office. June 2 1881.

Room No. 221
All communications should be addressed to "The Commissioner of Patents, Washington, D. C."

DEPARTMENT OF THE INTERIOR,
Cpd UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., June 7, 1881.

ELGIN NAT. WATCH CO.,
Care Geo. S. Prindle,
Present.

Please find below a copy of a communication from the EXAMINER OF TRADE-MARKS regarding your T. M. application, filed Apr. 29, 1881.

Very respectfully,
E M MARBLE
Commissioner of Patents.

Case No. 12,845.

The word "Elgin" being geographically descriptive of the place of manufacture of applicants' goods is not registrable as a trade mark.

See U. S. Supreme Court Decision D. H. & Co. vs. Clark, 1 O. G., 279.

F. A. SEELY,
Examiner.

[Endorsed]: 4. 19. 12845. June 7/81. Rejection. Elgin National Watch Co.

To the Commissioner of Patents.

In the matter of the application of The Elgin Nat. Watch Co. for Registration of Trade-Mark "Elgin," filed Apl. 28th 1881, No. 12,845.

OATH.

COUNTY OF WASHINGTON } 88:–
DIST. OF COLUMBIA. }

I, Henry Semken, being duly sworn depose and say, that I have been engaged in the sale of Watches during the past thirty years, and that I am familiar with the watches manufactured and sold by the Elgin National Watch Co. The term "Elgin" has been used by the trade and by the public generally for many years to designate the watches manufactured by the said Co., and to my knowledge has never been used to designate any other watches than those manufactured by the same.

HENRY SEMKEN

Sworn before me this 17th. day of October, 1882.

W. SCOTT TOWERS

(Notarial Seal.) Notary Public

[Endorsed]: 5. 19. 12845. Oct. 17 – 82. Affidavit. Elgin National Watch Co. U. S. Patent Office. Oct 17 1882.

Room No. 221.
All communications should be addressed to
"The Commissioner of Patents,
Washington, D. C."

DEPARTMENT OF THE INTERIOR,

C. UNITED STATES PATENT OFFICE,

WASHINGTON, D. C., October 25, 1882.

ELGIN NATIONAL WATCH CO.,
Care Mr. George S. Prindle,
Present.

Please find below a copy of a communication from the EXAMINER OF TRADE-MARKS regarding your trade mark application, filed April 29, 1881.

Very respectfully,

E M MARBLE

Case No. 12,845. Commissioner of Patents.

In view of the affidavit last filed the above entitled case may issue when placed in a formal condition.

There is no reference made in the papers to the accompanying fac-simile.

The recital of both the class of merchandise and the particular description of goods is omitted in the body of the statement. Both of these recitals are required by the statute.

D. CLARK
A. Ex.

F. A. SEELY,
Examiner.

[Endorsed]: 6. 19. 12845. Oct. 25, 82. Letter. Elgin National Watch Co.

To the Commissioner of Patents.

In the matter of the application of the Elgin Nat. Watch Co. for Registration of Trade-Mark

"Elgin",

filed Apl. 28th. 1881. Office number No. 12845.

Oct. 26, '82.
Amdt B

I hereby amend the specification by inserting after the word "Elgin" in 13th line of page 2, the words "as shown by the accompanying fac-simile".

Very respectfully,

GEO. S. PRINDLE,

Attorney.

[Endorsed]: 7. 19. 12845. Oct. 26-82. Amdt. B. Elgin National Watch Co. U. S. Patent Office. Oct 26 1882.

Issue Division.
All communications should be addressed to
"The Commissioner of Patents,
Washington, D. C."

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE,

WASHINGTON, D. C., Oct. 27 1882.

ELGIN NATIONAL WATCH CO.,

c/o G. S. Prindle,

City.

Sir: YOUR APPLICATION for REGISTRATION OF TRADE-MARK for Watch Movements has been examined and allowed.

The Certificate of Registration will be issued and forwarded to you as soon as practicable, in due order of business.

Very respectfully,

E M MARBLE

Commissioner of Patents.

[Here follows printed Patent Office copy of Statement and Declaration of Trade-Mark No. 9,810.]

1473
191

File-Wrapper and Contents of Trade-Mark No. 21,462.

DEPARTMENT OF THE INTERIOR,

UNITED STATES PATENT OFFICE.

To all persons to whom these presents shall come, Greeting:

This is to certify that the annexed is a true copy from the records of this Office of the file-wrapper and contents in the matter of the Trade-Mark registered by Elgin National Watch Company, July 19, 1892, Number 21,462, for Watches.

In testimony whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed at the City of Washington this 23d day of December, in the year of our Lord one thousand eight hundred and ninety-six, and of the independence of the United States of America the one hundred and twenty-first.

[SEAL.]

S. T. FISHER,
Acting Commissioner of Patents.

Amount received
$.
Chief Clerk.

PETITION FOR REGISTRATION OF TRADE-MARK.

The Commissioner of Patents:

The undersigned presents herewith a fac-simile of its lawful trade-mark, and requests that the same, together with the accompanying statement and declaration may be registered in the United States Patent Office, in accordance with the law in such cases made and provided.

The undersigned further requests that Messrs. Geo. S. Prindle and Philip G. Russell, of the firm of Prindle and Russell, of Washington, D. C., may be recognized as its true and lawful Attorneys, with full power to perform each and every act necessary in the premises.

ELGIN NATIONAL WATCH CO
by Thomas M Avery Pres.

(Companys' Seal.)

Chicago, Illinois, May, 17" 1892.

STATEMENT-

To all whom it may concern:–

Be it known that the Elgin National Watch Company, a corporation created under the laws of the State of Illinois, and doing business a Chicago, in the county of Cook and State of Illinois, has adopted for its use a Trade-Mark for Watches, of which the following is a full, clear, and exact description–

Said trade-mark consists of the word

"Elgin,"

as shown by the accompanying fac-simile ~~and as a purely arbitrary symbol is used to designate particular classes or styles of watches manufactured by said corporation~~

Erase A
Insert A
June 22 '92

The class of goods to which the trade-mark is appropriated is time keeping instruments and the particular description of goods comprised in said class upon which we have used it is Watches.

This trade-mark is affixed to the plate or plates or to the dial of the watch by stamping, engraving, or in any other well known manner, and is also used in circulars, illustrated catalogues, labels, brands, &c., or in any well known manner for the purpose of advertising the company's particular classes of goods.

This trade-mark has been used in the business of said company for twenty-two years and six months last past–

In testimony whereof said company hereunto affixes its seal this 17" day of May, A. D., 1892.

ELGIN NATIONAL WATCH CO (Companys Seal.)
by Thomas M Avery
President of said Company

Witnesses) GEO. S. PRINDLE
) GEO PRALL

DECLARATION-

COUNTY OF COOK, } ss:-
STATE OF ILLINOIS }

Thomas M. Avery, being duly sworn, deposes and says that he is an officer of the Elgin National Watch Company, beforenamed; that he verily believes that the foregoing statement is true; that said company has at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the trade-mark is used by said corporation in commerce between the United States and foreign nations or Indian tribes, and particularly with Great Britain, France, Belgium, Austria, Germany, and Prussia; that the description and fac-simile presented for record truly represents the trade-mark sought to be registered, and that he is a citizen of the United States.

THOMAS M AVERY

Sworn before me this 17th day of May A. D. 1892
D. WILEY MCCAUGHEY
Notary Public for Cook County
State of Illinois-

(Notarial Seal.)

[Endorsed]: Serial No. 79. 42042. Paper No. ½.

Appln. Filed June 10, 1892. Elgin National Watch Co. U. S. Patent Office, Jun 10 1892, Chief Clerk.

DEPARTMENT OF THE INERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., June 15, 1892.

ELGIN NATIONAL WATCH CO.

Care Prindle & Russell
City.

Trade Mark,
No. 42042.
June 10, 1892.

"Elgin"

This case is not entitled to consideration, no essential features of the mark being set forth. They are required to be and lines 13 to 16 inclusive should be accordingly amended. The date of use of the mark should be given as definitely as convenient, that is, naming month and year, for purposes of publication in the event of allowance. However registration must be refused the word "Elgin" on the ground that geographical names as a rule do not constitute valid trade marks, and it is not understood applicant may be entitled to an exclusive use of this word as against the National Watch-works established at said place and doing an extensive business there.

HUTCHINGS

F. A. SEELY
Asst.

[Endorsed]: Serial No. 79. 42042. Paper No. 1. Letter. Dated June 15 1892.

To the Commissioner of Patents,

In the matter of the application of the Elgin National Watch Co., for Registration of Trade-Mark– "Elgin," –filed June 10th 1892,–Case No. 42,042;–erase lines 14, 15 and 16 on page 1 of statement, and insert,

"in which said word appears printed in plain block letters on a horizontal line. But such printing and arrangement of letters can be varied, as desired, without materially altering the character of the said trade-mark, the essential feature of which is the word "Elgin"."

On line 30 and 31 of page 1 of statement, erase the words "for twenty years and six years, last past," and insert "since April 11th 1868."

As to the objection contained in the last paragraph of the Office letter, applicant would call attention to the fact that, as set forth in its statement, the word sought to be registered as a trade-mark has been used for 24 years, and submits that such long continued use during which the word has come to be recognized by dealers, generally, as indicating a certain make and kind of goods, should take such word out of or beyond its ordinary geographical significance, when used upon watches, as it is by applicant.

It is thought that the National Watch Works, referred to in the Office letter, are the ones for whom registration was asked by mistake. In the application for registration, the word "Elgin" was by oversight, left out. The Company, which should have had and afterwards did get registration for the words as applied to watch movements, was really the Elgin National Watch Co.

A reconsideration of the case in view of the above explanation, is requested.

If desired, affidavits can be furnished to show that the

trade generally has, for a long time regarded the world now sought to be registered, in the nature of a trade-mark, to indicate a certain manufacture and grade of goods.

Respectfully,
ELGIN NATIONAL WATCH Co
by Prindle & Russell
its Attys.

[Endorsed]: Serial No. 79. 42042. Paper No. 2. Amdt. A & Arg. Filed June 22, 1892. Elgin National Watch Co. U. S. Patent Office Jun 22 1892 Trade-Marks.

Issue Division.
All communications should be addressed to
"The Commissioner of Patents,
Washington, D. C."

DEPARTMENT OF THE INTERIOR,
UNITED STATES PATENT OFFICE,
WASHINGTON, D. C., June 27, 1892

ELGIN NATIONAL WATCH COMPANY,
c/o Prindle & Russell
City.

Sir: Your APPLICATION for REGISTRATION OF TRADE-MARK for Watches has been examined and allowed.

The Certificate of Registration will be issued and forwarded to you as soon as practicable, in due order of business.

Very respectfully,
W. E. SIMONDS,
Commissioner of Patents.

[Here follows printed Patent Office copy of Statement and Declaration of Trade-Mark No. 21,462.]

UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

Elgin National Watch Company, *Complainant.*
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, *Defendants.* } In Equity.

Testimony taken on behalf of the complainant in the above-entitled cause, in rebuttal, this 4th day of May, 1897, at 10 o'clock A. M., before me, L. A. Gardiner, Notary Public, at the office of Mr. Lysander Hill, No. 1133 Monadnock Building, Chicago, Illinois, by consent of the parties.

Present: Mr. Lysander Hill and Mr. George S. Prindle, for complainant, and Mr. Thomas Banning, of Banning, Banning & Sheridan, for defendants.

JOHN M. CUTTER, a witness produced on behalf of complainant, being recalled, deposes and says, in answer to interrogatories by complainant's counsel:

Q. 1. Are you the same John M. Cutter who previously testified in this case?

A. I am.

Q. 2. Do you know of a concern here in Chicago called the "Atlas Watch Company"?

A. I do. They are an Illinois corporation.

Q. 3. What is their business.

A. The selling of watch-movements marked "Atlas Watch Company, Chicago, U. S. A."

Q. 4. Did your company, the Elgin National Watch

Company, ever make any watch-movements for the Atlas Watch Company?

A. Yes, sir.

Q. 5. Did you mark your trade-mark or the trade-mark of the Atlas Watch Company on those movements?

A. We marked both the plate of the movement and the dial with the trade-mark of the Atlas Watch Company.

Q. 6. Why did you mark those movements with the trade-mark of that company instead of marking them with the trade-mark of your own company?

A. Because it was the purpose of the Atlas Watch Company to have movements marked with their own trade-mark, in which we had no connection as regards the sale to the trade. Movements bearing our own trade-marks we sell ourselves to the entire jobbing trade.

Q. 7. Then, if I understand you correctly, your company had nothing to do with the sale of the movements made for the Atlas Watch Company; am I correct?

A. You are correct. We had nothing to do with the sale of these movements except to the Atlas Watch Company.

Q. 8. So far as the trade was concerned, they handled them themselves?

A. Yes, sir.

Cross-Examination by Mr. Banning.

X Q. 9. Have there ever been any other instances in which your company have manufactured watch-movements for parties on which your trade-mark was not placed?

Objected to as immaterial, and also as irrelevant to the examination-in-chief.

A. Yes, sir; it has been the custom of the Elgin Com-

pany to manufacture goods for other people, meaning by this the jewelry trade, in which the trade-mark of the company has been omitted entirely. In fact, it is the common custom of all watch companies to so manufacture goods. It has been with the Elgin Company the custom, at least for twenty-five or thirty years.

X Q. 10. Has your company ever manufactured watch-movements on which the word "Elgin" has been used in connection with some other words, as, for instance, "Lady Elgin"?

A. Yes, sir. That is one of our registered trade-marks, and which we have applied to a great many watch-movements.

X Q. 11. What other trade-marks have you used on your watch-movements in which the word "Elgin" was used as a part of the trade-mark?

A. I do not recall any other instances of the use of the word "Elgin" except in connection with "Elgin Natl. Watch Co." and "Elgin, Ills.," or simply the word "Elgin" painted on the dial.

X Q. 12. You have used, then, as I understand, on your watch-movements, as your trade-marks, the words "Elgin," "Lady Elgin," "Elgin, Ills.," "Elgin Natl. Watch Co." Is that correct?

A. We have used the above as part only of our different trade-marks. We have not confined ourselves to them exclusively. We manufacture movements marked, for instance, "B. W. Raymond" on the plate, "Elgin, Ills.," on the barrel-bridge, and "Elgin Natl. Watch Co." on the dial. We have also marked movements "G. M. Wheeler," with "Elgin, Ills.," on the barrel-bridge, and "Elgin Natl. Watch Co." on the dial. These are the only exceptions at the present time. In years past we had a great number of names as trade-marks

which were applied to the movements in much the same manner as here indicated. I should say that in most instances the word "Elgin" appeared on the movement somewhere, or on the dial, or both.

X Q. 13. Was the word "Elgin" used as a part of the names which you say you used in years past?

A. The word "Elgin" was engraved upon the movements or marked upon the dial in some manner. I can't say it was ever applied other than as here stated.

X Q. 14. Please give some of these names that were used in years past, if you can.

Objected to as immaterial and irrelevant.

A. The following is a partial list of the names as nearly as I can recall them: "H. H. Taylor," "M. D. Ogden," "J. T. Ryerson," "Chas. Fargo," "Matt. Laflin," "T. M. Avery," "Francis Ruby," "Gail Borden," "Dexter Street," "State Street," "The Advance," "The Age," "The Chief," "The Leader," "H. Z. Culver," "W. H. Ferry."

X Q. 15. In the use of the words "The Advance," "The Age," "The Chief," "The Leader," for instance, did you use the word "Elgin" as part of the trade-mark?

A. My recollection is that the plate was engraved "Elgin Natl. Watch Co.," and that the barrel-bridge was engraved "The Advance," "The Age," etc.; also that the dial was marked "Elgin Natl. Watch Co.

So far as I can now recall, we have never applied any of the trade-marks here mentioned, as, for instance, "B. W. Raymond," "H. H. Taylor," etc., without having also applied the word "Elgin," as, for instance, "Elgin Natl. Watch Co.," or "Elgin Ills.," engraved on the plate or barrel-bridge or marked on the dial.

X Q. 16. Were these movements known and designated as, for instance, "The Elgin Advance," "The Elgin Age," "The Elgin Chief," "The Elgin Leader," etc.?

A. I do not understand your question as regards the words "known" and "designated."

X Q. 17. Did you call them that, or were they called that in the trade and among the dealers?

A. I cannot say as to that. These movements were quoted in our price-lists and in the trade price-lists as "Elgin movements," and it might be fair to assume that they were known as the "Elgin Advance," etc.

X Q. 18. As I understand you, your company is not using these various names at the present time, with the exception of "B. W. Raymond" and "G. M. Wheeler." Is that correct?

A. We are not now manufacturing them, but there are in the hands of our trade movements marked with some of the other trade-marks here mentioned.

X Q. 19. As a matter of fact, you have used the word "Elgin" in connection with watch-movements manufactured by your company of a great many different qualities, styles and varieties, have you not?

A. Yes, sir; we have.

Re-Direct Examination.

R-D. Q. 20. Were these different names, such as "B. W. Raymond," "G. M. Wheeler," "H. H. Taylor," "The Advance," "The Age," etc., etc., used to distinguish different styles, models or grades of movements?

A. Yes, sir; they were.

R-D. Q. 21. How do you distinguish different styles, models or grades at the present time?

A. By numbers which are used by ourselves, primarily, at the factory, and the trade use them in printing the

price-lists and catalogues; we have various numbers, such as 96, 73, etc. These numbers are not marked on movements. They are simply applied to packages, and the means of identification there is the serial number of the movement as printed on the label which is applied to the package.

JNO. M. CUTTER.

Sworn to and subscribed before me this 4th day of May, 1897.

L. A. GARDINER,
[SEAL.] Notary Public.

Adjourned until 2:30 P. M., May 4th.

Two o'clock P. M. Met pursuant to adjournment. Present as before.

ROBERT W. REID, a witness produced on behalf of the complainant, first being duly sworn, testified as follows to interrogatories propounded by complainant's counsel:

Q. 1. Please state your name, age, residence and occupation.

A. Name, Robert W. Reid; age, twenty-two years; residence, Elgin, Ill.; occupation, bookkeeper.

Q. 2. With what concern are you employed?

A. Lowrie & Black.

Q. 3. What is their business?

A. Publishing of "The Elgin Daily News" and "Weekly Advocate." The Elgin Daily News is the daily paper, and the Weekly Advocate is the weekly paper.

Q. 4. How long have you been employed in that capacity?

A. Five years.

Q. 5. Please look at the paper now handed you, marked "Complainant's Exhibit Elgin Daily News Article," the same purporting to be a copy of "The Elgin Daily News" issued at Elgin, Illinois, Saturday evening, December 19, 1896, and state whether you recognize it as a copy of the Elgin Daily News issued on said date.

A. I do.

Q. 6. I call your attention to an article published on page 16 of said Elgin Daily News of December 19, 1896, entitled "The Illinois Watch Case Company," including a cut or picture purporting to be a picture of the plant of the Illinois Watch Case Company, and including also a short article referring to said company and its business. Do you recollect such article and cut?

A. Yes, sir.

Q. 7. Was that article in the nature of an advertisement, paid for by the party interested?

A. Yes, sir.

Q. 8. Do the books of your employers show who paid for the insertion of that article in your paper?

A. Yes, sir.

Q. 9. Have you here one of the books of your company showing the transaction?

A. I have the book showing the payment.

Q. 10. Will you produce said book and point to the entry of said payment?

A. I hereby produce the book. The entry is as follows: "Ill. Watch Case Co. $10.00."

Q. 11. Under what date is that entry?

A. December 21, 1896.

Q. 12. What is this book which you have here produced containing said entry?

A. Our cash book.

Q. 13. Is it a book of original entry?

A. Yes, sir.

Q. 14. Was this entry made in it in the regular and usual course of your business?

A. It was.

Q. 15. Is this one of the books in your charge as bookkeeper of Lowrie & Black?

A. Yes, sir.

Cross-Examination by Mr. Banning.

X Q. 16. Did you make the entry that has been quoted from this book?

A. No, sir.

X Q. 17. Do you know who paid the $10 noted on your book?

A. No.

X Q. 18. Was it paid in currency or by check?

A. I don't remember.

X Q. 19. Do you know as a matter of fact that any money was paid by the Illinois Watch Case Company as purported in that entry which you have quoted?

Objected to as immaterial.

A. Not any more than our books show.

X Q. 20. From the fact that you find this entry you base your conclusion that this money was paid, do you not?

A. Yes, sir.

Q. 21. You personally have no knowledge of the fact, have you?

A. No, sir. I balanced the account that day, and it balanced.

Q. 22. Do you know who prepared the article to which your attention has been called, in the Elgin Daily News?

A. Mr. Hevenor wrote nearly all of the advertisements, and I suppose he wrote that one.

X Q. 23. Who was Mr. Hevenor?

A. A gentleman engaged by Lowrie & Black to do the special work required to get up our special edition of December 19, 1896.

X Q. 24. He saw the various firms and parties whose business is exploited in this edition and wrote up the articles. Is that your understanding?

A. Yes, sir.

X Q. 25. Was this article to which your attention has been called, in the Daily News, or a proof of it, submitted to the Illinois Watch Case Company before the paper was brought out?

A. Well, we suppose so; we don't know. Mr. Hevenor did it, if any one did.

X Q. 26. Do you know who Mr. Hevenor saw at the Illinois Watch Case Company to get the facts or data on which the article was prepared?

A. No, sir.

X Q. 27. These various advertisements or articles are intended to be general and popular in their nature, are they not?

A. I don't understand exactly what you mean by that question.

X Q. 28. They are intended to be in the nature of puffs or booms of the various industries and of the town, are they not?

A. They are write-ups. I don't know that you can call them puffs. They simply state the facts about each of the parties.

X Q. 29. Are the facts thus stated always the truth?

A. We think so; we try to get the truth.

Re-Direct Examination by Complainant's Counsel.

R-D. Q. 30. When you say that you balanced the account that day and it balanced, do you mean that the cash in hand corresponded to the amount which there should have been if this $10 had been paid in?

A. Yes, sir.

R-D. Q. 31. Do you know whether or not it was customary, in getting up these special advertising issues, to submit the various articles to the parties interested and get their approval of the same, or to submit to them the proof for correction, before the articles were published?

A. In this particular edition we understood from Mr. Hevenor that these articles were approved by the people they were for. We don't know, because he did all the business.

R-D. Q. 32. Where is Mr. Hevenor now?

A. The last we heard from him he was in Wisconsin.

Re-Cross Examination by Mr. Banning.

R-X Q. 33. Was Mr. Hevenor one of the regular reporters or staff of the paper, or connected with the paper except in connection with getting up this special edition?

A. He simply worked for us on that special edition.

R. W. REID.

Sworn to and subscribed before me this 4th day of May, 1897.

L. A. GARDINER,
Notary Public.

[SEAL.]

Notary's Certificate.

STATE OF ILLINOIS, }
COUNTY OF COOK. }

I, L. A. Gardiner, a Notary Public within and for the County of Cook and State of Illinois, do hereby certify that the foregoing depositions of John M. Cutter and R. W. Reid were taken on behalf of the complainant, the Elgin National Watch Company, by consent, before me, at No. 1133 Monadnock Building in the City of Chicago, in said county, on the 4th day of May, 1897; that each of said witnesses was by be duly sworn before the commencement of his testimony; that the testimony of said witnesses was written out by myself on the typewriter; that the opposing parties, the Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, were present by their counsel, Mr. Thomas Banning, during the taking of said testimony; that said testimony was taken at No. 1133 Monadnock Building, Chicago, Illinois, and was commenced at 10 o'clock A. M. on the 4th day of May, A. D. 1897, and was concluded on the same day; that I am not connected by blood or marriage with either of said parties nor interested directly or indirectly in the matter in controversy.

In witness whereof, I have hereunto set my hand and affixed my seal of office, at Chicago, in Cook County, this 4th day of May, A. D. 1897.

LIZZIE A. GARDINER,
Notary Public.

Complainant's Exhibit Change of Corporate Name.

THE NATIONAL WATCH COMPANY.

CHICAGO, Illinois, May 12, 1874.

We hereby certify that at a special meeting of the stockholders of "THE NATIONAL WATCH COMPANY" held at their office in Chicago, on the twelfth day of May, 1874, pursuant to notice given in the manner provided by law, the following question was submitted to the stockholders:

Resolved, That the name of THE NATIONAL WATCH COMPANY be and the same is hereby changed to "ELGIN NATIONAL WATCH COMPANY," and the question being upon the adoption of such resolution, the stockholders proceeded to vote upon the same, which said resolution was adopted by the stockholders, two thirds of the votes represented by the whole stock of such corporation voting therefor.

In Witness Whereof, we have hereunto set our hands and affixed the seal of said corporation this twelfth (12) day of May, A. D., 1874.

T. M. AVERY, President.

[SEAL.] HIRAM REYNOLDS, Secretary.

STATE OF ILLINOIS, } ss.
COOK COUNTY. }

T. M. Avery, being duly sworn deposes and says that he has read the foregoing certificate subscribed by him and knows the contents thereof, and that the same is true

in substance and in fact, and that he is President of said corporation.

Subscribed and sworn this 14th day of May, 1874.

T. M. AVERY, President.

JNO. R. FLOYD, [SEAL.]
Notary Public.

Filed, May 15, 1874,
GEO. H. HARLOW,
Sec'y of State.

UNITED STATES OF AMERICA, } ss.
STATE OF ILLINOIS. }

OFFICE OF THE SECRETARY OF STATE.

I, William H. Hinrichsen, Secretary of State of the State of Illinois, do hereby certify that the foregoing is a true copy of a certificate of change of name from THE NATIONAL WATCH COMPANY, to ELGIN NATIONAL WATCH COMPANY, filed in this office, May 15th, 1874, the original of which is now on file in this office.

In witness whereof, I hereunto set my hand and affix the Great Seal of State, at the City of Springfield, this fifth day of September, A. D. 1896.

W. H. HINRICHSEN,
Secretary of State.

[SEAL.]

Complainant's Exhibit Act of Incorporation.

AN ACT TO INCORPORATE "THE NATIONAL WATCH COMPANY."

SECTION 1. Be it enacted by the People of the State of Illinois, represented in the General Assembly That Benjamin W. Raymond, Joseph T. Ryerson, Philo Carpenter, Thomas S. Dickerson, Howard Z. Culver George M. Wheeler, Benjamin F. Lawrence, and their associates, successors and assigns be, and they are hereby created a body corporate and politic, by the name and style of "The National Watch Company, and by that name they, and their successors shall have perpetual succession, and be capable in law of contracting and being contracted with, sueing and being sued, of having and using a common seal, of constructing, purchasing, holding, using and selling such machinery, stock, materials, and other personal property, and of purchasing holding and conveying such real estate in the Cities of Elgin and Chicago, or elsewhere, as shall be found necessary or desirable for the business and objects of this corporation, whose general Office shall be located in the City of Chicago.

SECTION 2. The said Corporation is authorized to manufacture, purchase and sell, Watches, Clocks, and Jewelry and parts thereof, and materials for the manufacture of Watches Clocks and Jewelry.

SECTION No. 3. The Capital Stock of said company shall consist of such sum not exceeding Five Hundred Thousand Dollars, and be divided into shares of such amount as the stockholders may from time to time determine: such shares shall be personal property, and transferable in such manner as the By-Laws of said Company shall prescribe.

SECTION 4. The Corporation hereby created shall be under the direction of such number of directors as the Stockholders may from time to time determine, and until otherwise ordered, the number of directors shall be seven. Such directors shall be stockholders, and shall be elected by the stockholders, at such time, and in such manner, as the By-Laws of said Company shall provide, and shall hold their offices for the term for which they were elected, and until their successors are elected.

SECTION 5. Benjamin W. Raymond, Philo Carpenter, Thomas S. Dickerson, Howard Z. Culver, George M. Wheeler, Joseph T. Ryerson, and Benjamin F. Lawrence shall constitute the first Board of Directors under this act, and shall hold their offices until their successors are elected in manner herein provided.

SEC. 6. The Directors of said Company (a majority of which shall constitute a quorum) shall have and exercise (unless otherwise ordered by the stockholders) all the powers hereby conferred on said Corporation, and may elect such officers and agents, and make such By-Laws Rules and Regulations (not inconsistent with the laws of this State) for carrying into effect the objects of this act, as to them shall seem expedient. They shall also have power to fill any vacancy that may happen among the Directors, by death, resignation or otherwise.

SEC. 7. This act shall be deemed and noticed as a public act, without being specially pleaded, and shall take effect from its passage.

ALLEN C. FULLER,
Speaker of the House of Representatives.

WM. BROSS
Speaker of the Senate.

Approved Feb 15, 1865.

RICHARD J. OGLESBY
Governor.

UNITED STATES OF AMERICA, }
STATE OF ILLINOIS. } ss.

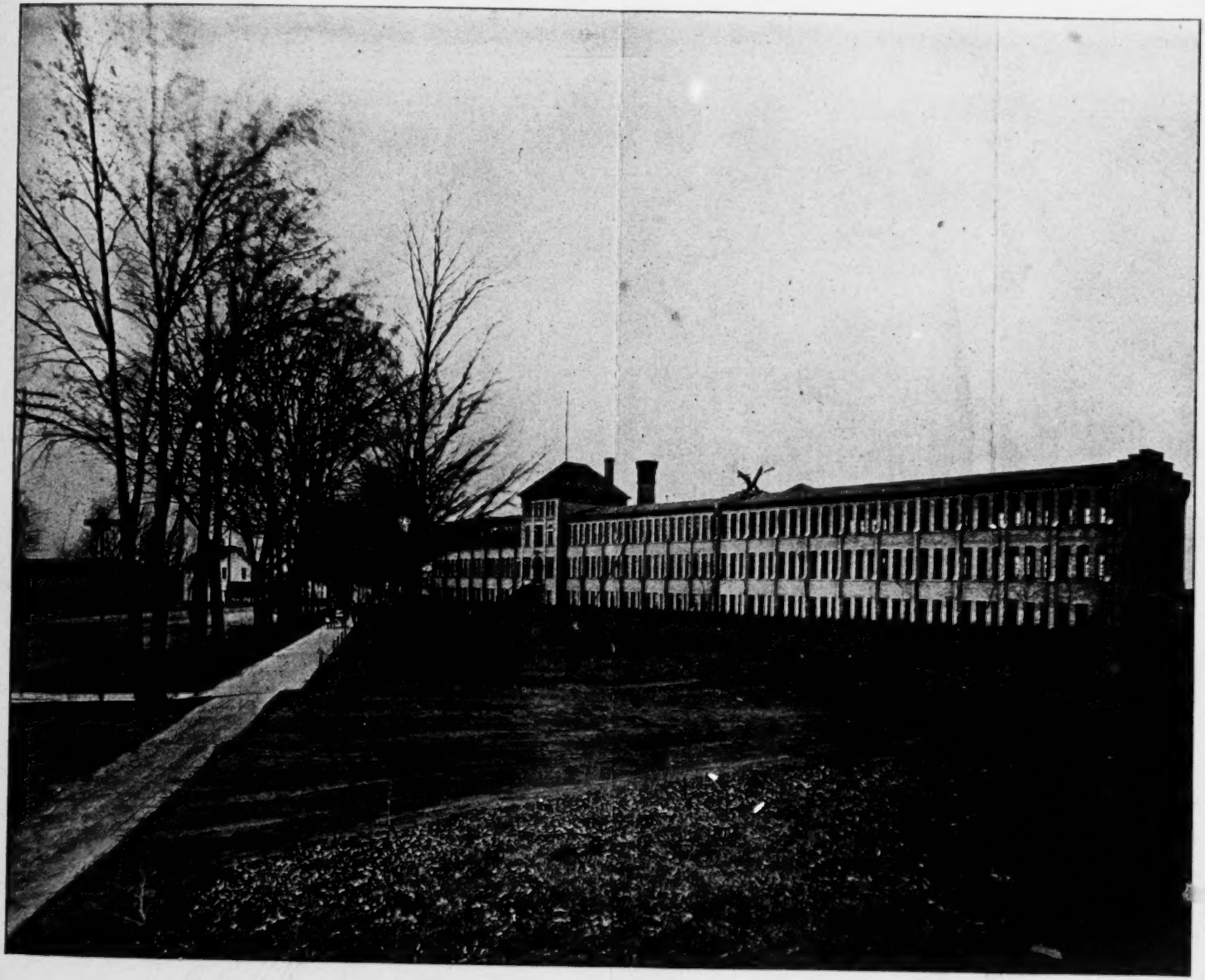
OFFICE OF THE SECRETARY OF STATE.

I, William H. Hinrichsen, Secretary of State of the State of Illinois, do hereby certify that the foregoing is a true copy of an act entitled "An Act to Incorporate The National Watch Company," approved and in force February 15, A. D. 1865, the original of which is now on file in this office.

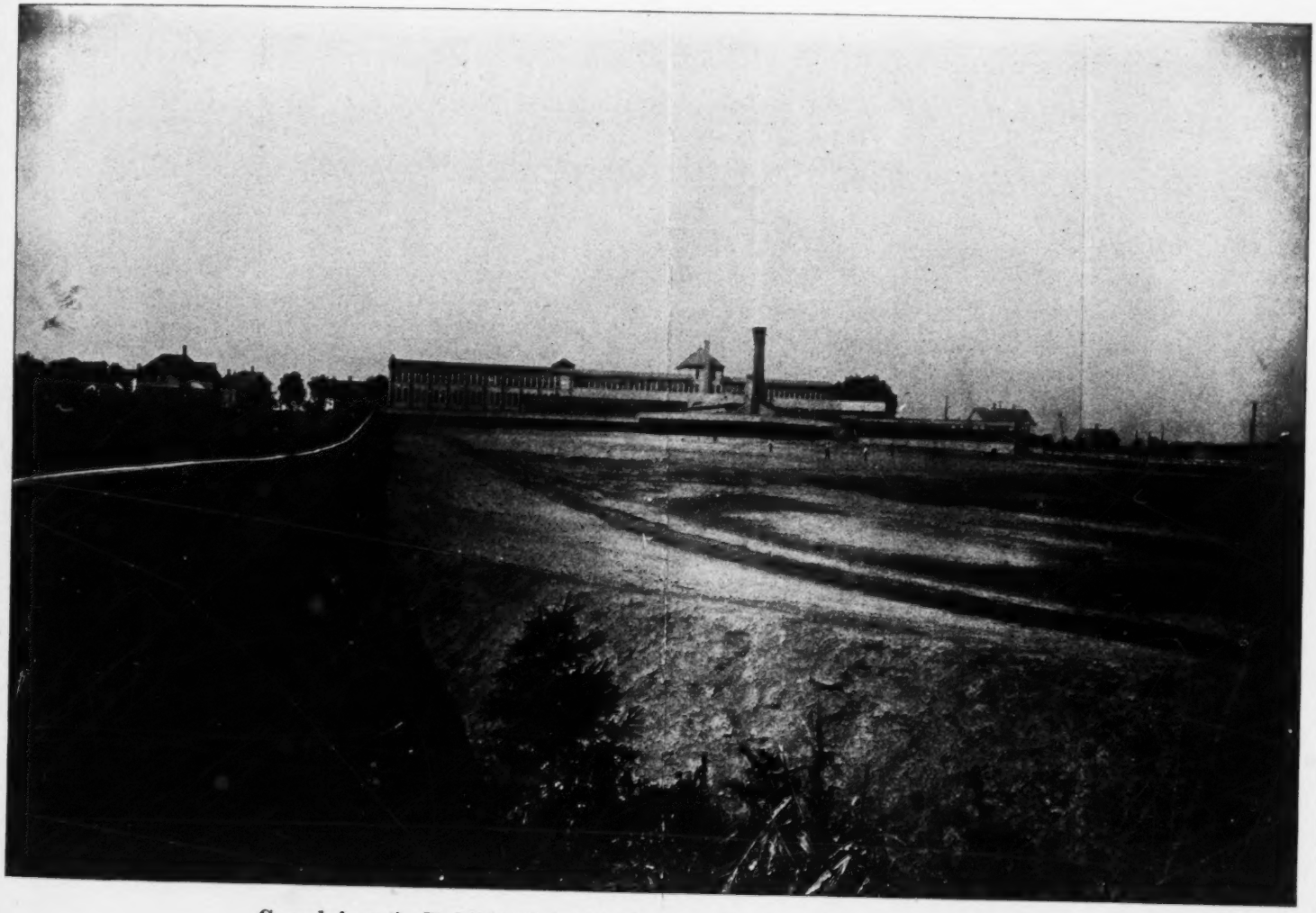
In witness whereof, I hereunto set my hand and affix the Great Seal of State, at the City of Springfield, this 5th day of September, A. D. 1896.

W. H. HINRICHSEN,
Secretary of State.

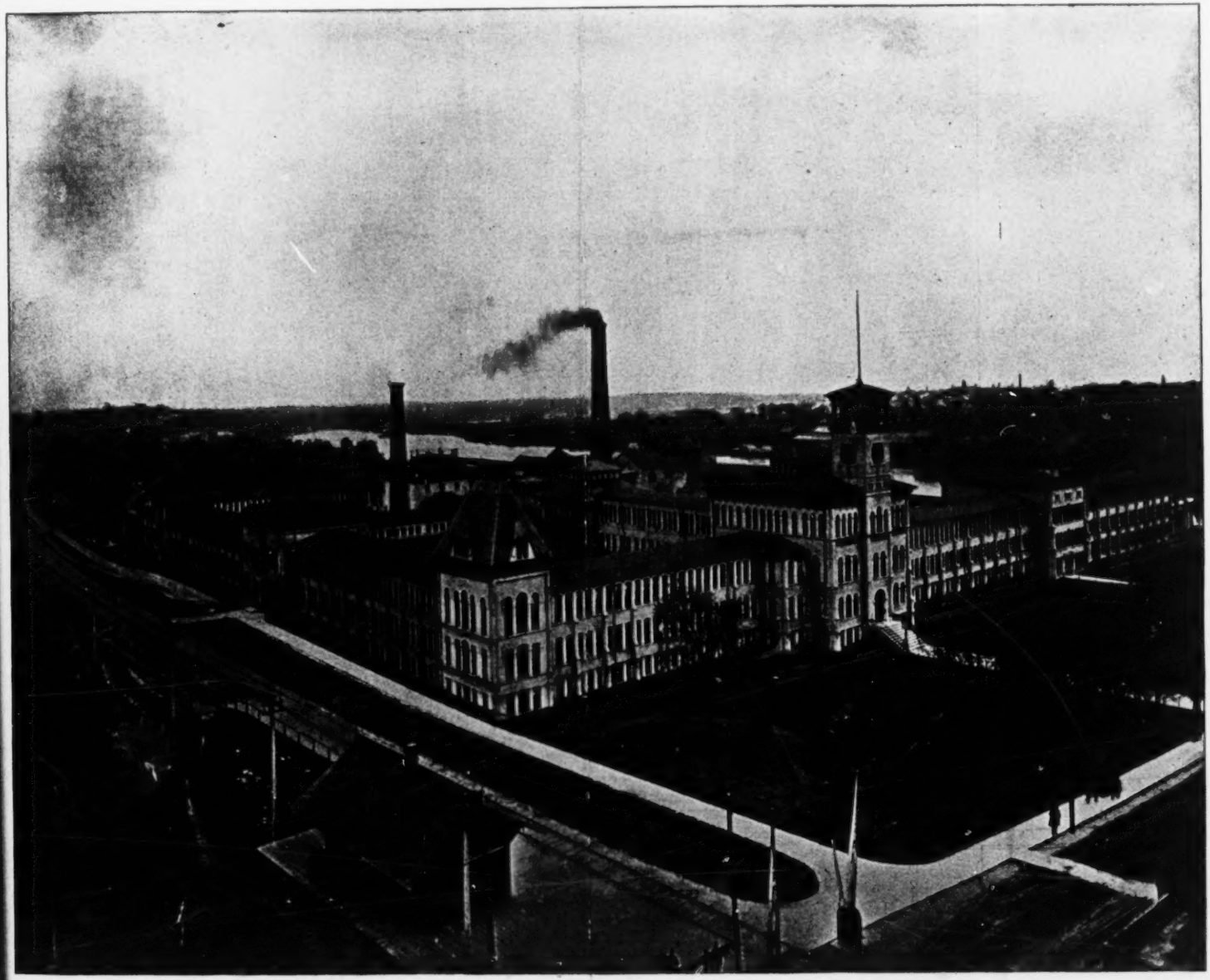
[SEAL.]



Complainant's Exhibit Photograph of Works of Illinois Watch Case Company.



Complainant's Exhibit Photograph Rear View of Defendants' Factory.



Complainant's Exhibit Photograph of Works of Elgin National Watch Company.

14752

TRADE-MARK.

ELGIN NATIONAL WATCH CO.

Watches.

No. 3,574. **Registered April 11, 1876.**

"ELGIN"

WITNESSES:

JAS. E. HUTCHINSON.

JOHN R. YOUNG.

THE ELGIN NATIONAL WATCH CO.,

by PRINDLE & CO., their

Attorneys.

UNITED STATES PATENT OFFICE.

ELGIN NATIONAL WATCH COMPANY, OF CHICAGO, ILLINOIS.

TRADE-MARK FOR WATCHES.

TATEMENT of Trade-Mark No. 3,574, registered April 11, 1876; application filed March 4, 1876.

ecification describing a Trade-Mark, used y the ELGIN NATIONAL WATCH COMPANY, a corporation organized under the laws of he State of Illinois, and doing business at Chicago, in the county of Cook and State f Illinois,) for Watches.

Our trade-mark consists in the word "ELGIN," l, as a purely arbitrary symbol, is used to ignate particular classes or styles of watch- manufactured by us.

This trade-mark is affixed to the plate or tes, or to the dial of the watch by stamp- , engraving, or in any other well-known nner, and is also used in circulars, illustrated catalogues, labels, brands, &c., or in any well-known manner, for the purpose of advertising our particular classes of goods.

This trade-mark has been used in our business for two years last past.

In testimony whereof we have hereunto affixed our hand this 17th day of January, 1876.

ELGIN NATIONAL WATCH CO.,
By HIRUM REYNOLDS, *Secretary*.

Witnesses:
W. G. PRALL,
T. W. BAXTER.

4754

TRADE-MARK.

ELGIN NATIONAL WATCH COMPANY.

(No. 3,574. Registered April 11, 1876.)

Watch Movements.

No. 9,810. **Registered Nov. 14, 1882.**

"ELGIN"

WITNESSES:

JAS. E. HUTCHINSON.
HENRY C. HAZARD.

THE ELGIN NATIONAL WATCH CO.,
by GEO. S. PRINDLE Attorney.

UNITED STATES PATENT OFFICE.

ELGIN NATIONAL WATCH COMPANY, OF CHICAGO, ILLINOIS.

TRADE-MARK FOR WATCH-MOVEMENTS.

STATEMENT and DECLARATION of Trade-Mark No. 9,810, registered November 14, 1882.

Application filed April 29, 1881.

STATEMENT.

To all whom it may concern:

Be it known that the ELGIN NATIONAL WATCH COMPANY, a corporation created under the laws of the State of Illinois, and doing business at Chicago, in the county of Cook and State of Illinois, has adopted for its use a Trade-Mark for Watch-Movements, of which the following is a full, clear, and exact description.

Said trade-mark consists of the word "ELGIN," as shown by the accompanying fac-simile, and as a purely arbitrary symbol is used to designate particular classes or styles of watch-movements manufactured by said corporation.

The class of goods to which the trade-mark is appropriated is time-keeping mechanism, and the particular goods is watch-movements.

This trade-mark is affixed to the plate or plates or to the dial of the watch by stamping, engraving, or in any other well-known manner, and is also used in circulars, illustrated catalogues, labels, brands, &c., or in any well-known manner for the purpose of advertising the company's particular class of goods.

This trade-mark has been used in the business of said company for thirteen years last past.

In testimony whereof said company hereunto affixes its seal this 11th day of April, A. D. 1881.

ELGIN NAT. WATCH Co., [L. S.]
By T. M. AVERY,
President of said Co.

Witnesses:
OVERTON S MELDRUM,
LUTHER S. GREEN.

DECLARATION.

County of Cook, State of Illinois, ss:

THOMAS M. AVERY, being duly sworn, deposes and says that he is an officer of the ELGIN NATIONAL WATCH COMPANY before named; that he verily believes that the foregoing statement is true; that said company has at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used in commerce with Great Britain, France, Belgium, Austria, Germany, and Russia; that the description and fac-similes presented for record truly represent the trade-mark sought to be registered, and that he is a citizen of the United States.

Sworn before me this 11th day of April, A. D. 1881.

[L. S.] JOHN R. FLOYD,
Notary Public for Cook County, Illinois.

14756

TRADE-MARK.

ELGIN NATIONAL WATCH COMPANY.

Watches.

No. 21,461. **Registered July 19, 189**

ELGIN ILL'S

WITNESSES:

JAS. E. HUTCHINSON.
HENRY C. HAZARD.

PROPRIETORS.

ELGIN NATIONAL WATCH CO., by
PRINDLE AND RUSSELL, its Attorne

UNITED STATES PATENT OFFICE.

ELGIN NATIONAL WATCH COMPANY, OF CHICAGO, ILLINOIS.

TRADE-MARK FOR WATCHES.

STATEMENT and DECLARATION of Trade-Mark No. 21,461, registered July 19, 1892.

Application filed June 10, 1892.

STATEMENT.

To all whom it may concern:

Be it known that the ELGIN NATIONAL WATCH COMPANY, a corporation created under the laws of the State of Illinois, and doing business at Chicago, in the county of Cook and State of Illinois, has adopted for its use a Trade-Mark for Watches, of which the following is a full, clear, and exact specification.

Said trade-mark consists of the word and abbreviation "Elgin, Ill's," as shown by the accompanying fac-simile, in which the word and abbreviation appear printed in plain block letters on a horizontal line; but other forms of type may be employed, and the letters may be otherwise printed, without materially altering the character of the said trade-mark, the essential features of which are the word "ELGIN" and the abbreviation "ILL'S."

The class of goods to which the trade-mark is appropriated is time-keeping instruments, and the particular description of goods comprised in said class upon which the said company has used it is watches.

This trade-mark is affixed to the plate or plates or to the dial of the watch by stamping, engraving, or in any other well-known manner, and is also used in circulars, illustrated catalogues, &c., for the purpose of advertising the company's particular classes of goods.

This trade-mark has been used in the business of said company since April, 1867.

In testimony whereof said company hereunto affixes its seal this 17th day of May, A. D. 1892.

[L. S.] ELGIN NATIONAL WATCH CO.,
By THOMAS M. AVERY,
Prest.

Witnesses:
GEO. S. PRINDLE,
WM. GEO. PRALL.

DECLARATION.

County of Cook, State of Illinois, ss:

THOMAS M. AVERY, being duly sworn, deposes and says that he is an officer of the ELGIN NATIONAL WATCH COMPANY the applicant named in the statement filed in the above-entitled application; that he verily believes that the said statement is true; that the said company has at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it has been used by said company in commerce between the United States and foreign nations or Indian tribes, and particularly with Great Britain, France, Belgium, Austria, Germany, and Russia; that the description and fac-simile presented for record truly represent the trade-mark sought to be registered, and that he is a citizen of the United States.

THOMAS M. AVERY.

Sworn before me this 23rd day of June, A. D. 1892.

[L. S.] D. WILEY McCAUGHEY,
Notary Public.

4758

TRADE-MARK.

ELGIN NATIONAL WATCH COMPANY.

Watches.

No. 21,462. **Registered July 19, 1892.**

ELGIN

WITNESSES:

JAS. E. HUTCHINSON.
HENRY C. HAZARD.

PROPRIETORS.

ELGIN NATIONAL WATCH CO., by
PRINDLE AND RUSSELL, its Attorneys.

UNITED STATES PATENT OFFICE.

ELGIN NATIONAL WATCH COMPANY, OF CHICAGO, ILLINOIS.

TRADE-MARK FOR WATCHES.

ATEMENT and DECLARATION of Trade-Mark No. 21,462, registered July 19, 1892.

Application filed June 10, 1892.

STATEMENT.

ll whom it may concern:

e it known that the ELGIN NATIONAL RCH COMPANY, a corporation created un- the laws of the State of Illinois, and do- business at Chicago, in the county of Cook State of Illinois, has adopted for its use rade-Mark for Watches, of which the fol- ing is a full, clear, and exact description. aid trade-mark consists of the word "El- " as shown by the accompanying fac- ile, in which said word appears printed in n block letters on a horizontal line; but n printing and arrangement of letters can aried as desired, without materially alter- the character of the said trade-mark, the ntial feature of which is the word "ELGIN." he class of goods to which the trade-mark ppropriated is time-keeping instruments, the particular description of goods com- ed in said class upon which said company used it is watches.

This trade-mark is affixed to the plate or plates or to the dial of the watch by stamping, engraving, or in any other well-known manner, and is also used in circulars, illustrated catalogues, labels, brands &c., or in any well-known manner for the purpose of advertising the company's particular classes of goods.

This trade-mark has been used in the business of said company since April 11, 1868.

In testimony whereof said company hereunto affixes its seal this 17th day of May, A. D. 1892.

[L. S.] ELGIN NATIONAL WATCH CO.,
By THOMAS M. AVERY,
President of said Co.

Witnesses:
GEO. S. PRINDLE,
WM. GEO. PRALL.

DECLARATION.

nty of Cook, State of Illinois, ss:

HOMAS M. AVERY, being duly sworn, de- es and says that he is an officer of the GIN NATIONAL WATCH COMPANY before ned; that he verily believes that the forego- statement is true; that said company has at time a right to the use of the trade-mark rein described; that no other person, firm, corporation has the right to such use, either he identical form or in any such near re- mblance thereto as might be calculated to eive; that the trade-mark is used by said poration in commerce between the United tes and foreign nations or Indian tribes, and particularly with Great Britain, France, Belgium, Austria, Germany, and Russia; that the description and fac-simile presented for record truly represent the trade-mark sought to be registered, and that he is a citizen of the United States.

THOMAS M. AVERY.

Sworn before me this 17th day of May, A.D. 1892.

[L. S.] D. WILEY McCAUGHEY,
Notary Public for Cook County, State of Illinois.

14760

TRADE-MARK.

ELGIN NATIONAL WATCH COMPANY.

Watches.

No. 21,463. **Registered July 19, 18**

LADY ELGIN

WITNESSES:

JAS. E. HUTCHINSON.
HENRY C. HAZARD.

PROPRIETORS.

ELGIN NATIONAL WATCH CO., by
PRINDLE AND RUSSELL, its Attorn

UNITED STATES PATENT OFFICE.

ELGIN NATIONAL WATCH COMPANY, OF CHICAGO, ILLINOIS.

TRADE-MARK FOR WATCHES.

STATEMENT and DECLARATION of Trade-Mark No. 21,463, registered July 19, 1892.

Application filed June 10, 1892.

STATEMENT.

To all whom it may concern:

Be it known that the ELGIN NATIONAL WATCH COMPANY, a corporation created under the laws of the State of Illinois, and doing business at Chicago, in the county of Cook and State of Illinois, has adopted for its use a Trade-Mark for Watches, of which the following is a full, clear, and exact description.

Said trade-mark consists of the words "Lady Elgin," as shown in the accompanying facsimile, in which said words appear printed in plain block letters on a horizontal line; but other forms of type may be employed, or the letters may be differently printed, without materially affecting the character of the trade-mark, the essential feature of which is the words "LADY ELGIN."

The class of merchandise to which the trade-mark is appropriated is time-keeping instruments, and the particular description of goods comprised in said class upon which said company has used it is watches.

This trade-mark is affixed to the plate or plates or to the dial of the watch by stamping, engraving, or in any other well-known manner, and is also used in circulars, illustrated catalogues, labels, brands, &c., or in any well-known manner for the purpose of advertising the company's particular classes of goods.

This trade-mark has been used in the business of said company since December 11, 1870.

In testimony whereof said company hereunto affixes its seal this 17th day of May, A. D. 1892.

[L. S.] ELGIN NATIONAL WATCH CO.,
By THOMAS M. AVERY,
Pres.

Witnesses:
GEO. S. PRINDLE,
WM. GEO. PRALL.

DECLARATION.

County of Cook, State of Illinois, ss:

THOMAS M. AVERY, being duly sworn, deposes and says that he is an officer of the ELGIN NATIONAL WATCH COMPANY before named; that he verily believes that the foregoing statement is true; that said company has at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the trade-mark is used by said corporation in commerce between the United States and foreign nations or Indian tribes, and particularly with Great Britain, France, Belgium, Austria, Germany, and Russia; that the description and fac-simile presented for record truly represent the trade-mark sought to be registered, and that he is a citizen of the United States.

THOMAS M. AVERY.

Sworn before me this 17th day of May, A.D. 1892.

[L. S.] D. WILEY McCAUGHEY,
Notary Public for Cook County, State of Illinois.

TRADE-MARK.

ELGIN NATIONAL WATCH COMPANY.

Watches.

No. 21,464. **Registered July 19, 1892.**

ELGIN NATIONAL WATCH CO.

WITNESSES:

JAS. E. HUTCHINSON.

HENRY C. HAZARD.

PROPRIETORS.

ELGIN NATIONAL WATCH CO., by

PRINDLE AND RUSSELL, its Attorneys.

UNITED STATES PATENT OFFICE.

ELGIN NATIONAL WATCH COMPANY, OF CHICAGO, ILLINOIS.

TRADE-MARK FOR WATCHES.

STATEMENT and DECLARATION of Trade-Mark No. 21,464, registered July 19, 1892.

Application filed June 10, 1892.

STATEMENT.

To all whom it may concern:

Be it known that the ELGIN NATIONAL WATCH COMPANY, a corporation created under the laws of the State of Illinois, and doing business at Chicago, in the county of Cook and State of Illinois, has adopted for its use a Trade-Mark for Watches, of which the following is a full, clear, and exact description.

Said trade-mark consists of the words and abbreviation "Elgin National Watch Co.," as shown by the accompanying fac-simile, in which said words appear printed in plain block letters on a horizontal line; but the type and form of printing can be changed, as desired, without materially altering the character of the trade-mark, the essential feature of which is the words "ELGIN NATIONAL WATCH CO."

The class of goods to which the trade-mark is appropriated is time-keeping instruments, and the particular description of goods comprised in said class upon which the said company has used it is watches.

This trade-mark is affixed to the plate or plates or to the dial of the watch by stamping, engraving, or in any other well-known manner, and is also used in circulars, illustrated catalogues, labels, brands, &c., or in any well-known manner for the purpose of advertising the company's particular classes of goods.

This trade-mark has been used in the business of said company since February, 1874.

In testimony whereof said company hereunto affixes its seal this 17th day of May, A. D. 1892.

[L. S.] ELGIN NATIONAL WATCH CO.,
By THOMAS M. AVERY,
President of said Co.

Witnesses:
GEO. S. PRINDLE,
WM. GEO. PRALL.

DECLARATION.

County of Cook, State of Illinois, ss:

THOMAS M. AVERY, being duly sworn, deposes and says that he is an officer of the ELGIN NATIONAL WATCH COMPANY, the applicant named in the statement filed in the above-entitled application; that he verily believes that the said statement is true; that the said company has at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it has been used by said company in commerce between the United States and foreign nations or Indian tribes, and particularly with Great Britain, France, Belgium, Austria, Russia, and Germany; that the description and fac-simile presented for record truly represent the trade-mark sought to be registered, and that he is a citizen of the United States.

THOMAS M. AVERY.

Sworn before me this 23rd day of June, A. D. 1892.

[L. S.] D. WILEY McCAUGHEY,
Notary Public.

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TRADE-MARK.

ELGIN NATIONAL WATCH COMPANY.

Watches.

No. 21,465. **Registered July 19, 1892.**

ELGIN WATCH CO.

WITNESSES:

JAS. E. HUTCHINSON.
HENRY C. HAZARD.

PROPRIETORS.

ELGIN NATIONAL WATCH CO., by
PRINDLE AND RUSSELL, its Attorneys.

UNITED STATES PATENT OFFICE.

ELGIN NATIONAL WATCH COMPANY, OF CHICAGO, ILLINOIS.

TRADE-MARK FOR WATCHES.

STATEMENT and DECLARATION of Trade-Mark No. 21,465, registered July 19, 1892.

Application filed June 10, 1892.

STATEMENT.

To all whom it may concern:

Be it known that the ELGIN NATIONAL WATCH COMPANY, a corporation created under the laws of the State of Illinois, and doing business at Chicago, in the county of Cook and State of Illinois, has adopted for its use a Trade-Mark for Watches, of which the following is a full, clear, and exact description.

Said trade-mark consists of the words and abbreviation "Elgin Watch Co.," as shown by the accompanying fac-simile, in which said words and abbreviation appear printed in plain block letters on a horizontal line; but other forms of type may be employed and the letters may be differently arranged or colored without materially altering the character of said trade-mark, the essential feature of which is the words and abbreviation "ELGIN WATCH CO."

The class of merchandise to which the trade-mark is appropriated is time-keeping instruments, and the particular description of goods comprised in said class upon which said company has used it is watches.

This trade-mark is affixed to the plate or plates or to the dial of the watch by stamping, engraving, or in any other well-known manner, and is also used in circulars, illustrated catalogues, labels, brands, &c., or in any well-known manner for the purpose of advertising the company's particular classes of goods.

This trade-mark has been used in the business of said company since October, 1873.

In testimony whereof said company hereunto affixes its seal this 17th day of May, A. D. 1892.

[L. S.] ELGIN NATIONAL WATCH CO.,
By THOMAS M. AVERY,
President of said Co.

Witnesses:
GEO. S. PRINDLE,
WM. GEO. PRALL.

DECLARATION.

County of Cook, State of Illinois, ss:

THOMAS M. AVERY, being duly sworn, deposes and says that he is an officer of the ELGIN NATIONAL WATCH COMPANY before named; that he verily believes that the foregoing statement is true; that said company has at this time a right to the use of the trade-mark therein described; that no other person, firm, or corporation has the right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that it is used by said corporation in commerce between the United States and foreign nations or Indian tribes, and particularly with Great Britain, France, Belgium, Austria, Germany, and Russia; that the description and fac-simile presented for record truly represent the trade-mark sought to be registered, and that he is a citizen of the United States.

THOMAS M. AVERY.

Sworn before me this 17th day of May, A. D. 1892.

[L. S.] D. WILEY McCAUGHEY,
Notary Public for Cook County, State of Illinois

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TRADE-MARK.

ILLINOIS WATCH CASE COMPANY.

Cases for Watches.

No. 23,893. **Registered Dec. 5, 1893.**

ELGIN TIGER

WITNESSES.

G. CARLETON BROWN.
SAMUEL E. HIBBEN

PROPRIETOR.

ILLINOIS WATCH CASE CO.
By THOMAS F. SHERIDAN
Attorney

UNITED STATES PATENT OFFICE.

ILLINOIS WATCH CASE COMPANY, OF ELGIN, ILLINOIS.

TRADE-MARK FOR CASES FOR WATCHES.

STATEMENT and DECLARATION of Trade-Mark No. 23,893, registered December 5, 1893.

Application filed August 10, 1893.

STATEMENT.

To all whom it may concern:

Be it known that the ILLINOIS WATCH CASE COMPANY, a corporation organized under the laws of the State of Illinois, and located in the city of Elgin, Kane county, in said State, and doing business in said city of Elgin, has adopted for its use a Trade-Mark for Watch Cases, of which the following is a full, clear, and exact specification.

As shown in the accompanying drawings, the trade mark of said company consists of the words "Elgin Tiger." These have generally been arranged as shown in the drawings, the words "Elgin Tiger" being in plain capital letters. But a scroll may be used and the various accessories varied at pleasure without materially altering the character of the said trade mark, the essential feature of which is the words "ELGIN TIGER."

This trade mark has been continuously used by said corporation since about the 1st of June, 1887.

The class of merchandise to which this trade mark is appropriated is cases for time keeping instruments, and the particular description of the goods in such class on which it is used by the said company is cases for watches. It is usually affixed to the goods by stamping or engraving on the interior of the back of the cases.

ILLINOIS WATCH CASE CO.,
By M. C. EPPENSTEIN,
President.

Witnesses:
ALSTON C. COY,
SOL C. EPPENSTEIN.

DECLARATION.

State of Illinois, county of Cook, ss.

MAX C. EPPENSTEIN, being duly sworn, deposes and says that he is president of the corporation, the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that it has at this time a right to the use of the trade mark therein described; that no other person, firm or corporation has a right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the same is used by it in commerce between the United States and foreign nations or Indian tribes, and particularly with the Dominion of Canada; and that the description and fac simile presented for record truly represent the trade mark sought to be registered.

MAX C. EPPENSTEIN.

Sworn to and subscribed before me, at Chicago, this 11th day of July, 1893.

[L. S.] SAMUEL E. HIBBEN,
Notary Public.

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TRADE-MARK.

ILLINOIS WATCH CASE COMPANY.

Watchcases.

No. 24,436. **Registered Apr. 3, 1894.**

ELGIN GIANT.

WITNESSES.

SAMUEL E. HIBBEN

ANNIE C. COURTENAY.

PROPRIETOR.

ILLINOIS WATCH CASE COMPANY.

By THOMAS F. SHERIDAN

Attorney.

UNITED STATES PATENT OFFICE.

ILLINOIS WATCH CASE COMPANY, OF ELGIN, ILLINOIS.

TRADE-MARK FOR WATCHCASES.

STATEMENT and DECLARATION of Trade-Mark No. 24,436, registered April 3, 1894.

Application filed March 5, 1894.

STATEMENT.

To all whom it may concern:

Be it known that the ILLINOIS WATCH CASE COMPANY, (successor to the good-will and business of watchcase-making of M. C. Eppenstein & Co., of Chicago, Cook county, Illinois,) a corporation existing under and by virtue of the laws of the State of Illinois, and located in the city of Elgin, Kane county, in said State, and doing business in said city of Elgin, has adopted for its use a Trade-Mark for Watchcases, of which the following is a specification.

As shown in the accompanying drawings, the trade mark of said company consists of the words "Elgin Giant." These words have generally been arranged as shown in the drawings, by printing "Elgin Giant" in plain capital letters in a straight line—but such arrangement or printing of the words may be varied as desired without materially altering the character of said trade-mark, the essential feature of which is the words "ELGIN GIANT."

This trade mark has been continuously used by said corporation since about the 1st of June, 1891.

The class of merchandise to which this trade-mark is appropriated is cases for timekeeping instruments, and the particular description of the goods of such class on which it is used by the said corporation is cases for watches. It is usually affixed to the goods by stamping, engraving or in any other well known manner on the interior of the back of the case. It is also used in circulars, illustrated catalogues and letter-heads for the purpose of advertising the corporation's particular class of goods.

ILLINOIS WATCH CASE CO.,
By MAX. C. EPPENSTEIN,
President.

Witnesses:
SAMUEL E. HIBBEN,
THOMAS F. SHERIDAN.

DECLARATION.

State of Illinois, county of Cook, ss.

MAX. C. EPPENSTEIN, being duly sworn, deposes and says that he is president of the corporation, the applicant named in the foregoing statement; that he verily believes that the foregoing statement is true; that it has at this time a right to the use of the trade mark therein described; that no other person, firm or corporation has a right to such use, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that the same is used by it in commerce between the United States and foreign nations or Indian tribes, and particularly with the Dominion of Canada; and that the description and fac simile presented for reference truly represent the trade mark sought to be registered.

MAX. C. EPPENSTEIN.

Sworn to and subscribed before me, at Chicago, this 14th day of February, 1894.

[L. S.] SAMUEL E. HIBBEN,
Notary Public.

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359 CLERK'S CERTIFICATE. Clerk's Certificate

NORTHERN DISTRICT OF ILLINOIS, } ss.
NORTHERN DIVISION, }

I, S. W. Burnham, Clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the record of all the proceedings had in said Court in the cause wherein Elgin National Watch Company, is the complainant and Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham, are the defendants, as the same appear from the original records and files of said Court now remaining in my custody and control.

[SEAL.] In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Chicago, in said District this 7th day of June, 1898.

S. W. BURNHAM, Clerk.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS—NORTHERN DIVISION. Stipulation.

Elgin National Watch Company,
vs.
Illinois Watch Case Company, Thomas W. Duncan & Myer Abraham. } 23974.

The Clerk of said Court will please make a transcript of the following proceedings had in the above entitled cause, for use in the United States Circuit Court of Appeals for the Seventh Circuit:

Bond for Costs.
Bill of Complaint.
Subpœna.
Appearance.
Demurrer.
Order of May 1, 1896.
Order of July 11, 1896.
Answer.
Replication.
Order of June 21, 1897.
Opinion.

Stipulation.

Order of April 12, 1898.
Amended Bill.
Decree of April 28, 1898.
Motion to Amend Decree.
Order of April 27, 1898.
Petition for Appeal and Assignment of Errors.
Order Allowing Appeal, May 14, 1898.
Appeal Bond.

COMPLAINANT'S PRIMA FACIE EVIDENCE.

Deposition of Geo. Hunter.
" " John M. Cutter.
" " Julius Schnering.
" " Samuel W. Dripps.
" " James L. Rowe.
" " Thomas W. Duncan.
" " Jno. P. Owen.
" " Leo Hettich.
" " Fred G. Thearle, Jr.
" " Louis H. Schafer.
" " Geo. S. Prindle.
" " Geo. E. Hunter.
" " O. C. Hansen.
" " John Schaub.
" " John M. Cutter (recalled).
" " Henry M. Carle.
" " Henry M. Carle (recalled.)
" " Geo. Weidig.
" " Samuel C. Payson.
" " Geo. S. Prindle (recalled).
Motion to Suppress Testimony.

DEFENDANTS' EVIDENCE.

Deposition of Thomas F. Sheridan.
" " Thomas W. Duncan.
" " Thomas W. Duncan (recalled).

COMPLAINANT'S REBUTTAL EVIDENCE.

Deposition of John M. Cutter.
" " Robert W. Reid.

COMPLAINANT'S EXHIBITS.

Stipulation.

Certificate of Trade-Mark.
Act of Incorporation.
Change of Corporate Name.
Photograph of Works of Ills. Watch Case Co.
Defendants' Elgin Commander Watch Case.
Defendants' Elgin Tiger Watch Case.
Defendants' Elgin Commander Trade-Mark.
Defendants' Elgin Tiger Trade-Mark.
Defendants' Elgin Giant Trade-Mark.
Bloomingdale Advertisement.
Manson Letter.
Manson Newspaper Slips.
Elgin National Watch Company's Bicycle Correspondence.
Evening Star.
Defendants' Bicycle Catalogue.
Elgin Watch Company's Notification to Defendants.
Judge Horton's Opinion.
Defendants' Elgin Giant Watch-Case.
Photograph of Rear View of Defendants' Factory.
Photograph of Works of Elgin National Watch Company.
Elgin Original Registration.
Second Elgin Registration.
Elgin Daily News Article.

DEFENDANTS' EXHIBITS.

Certificate of Registry of Trade-Mark "Lady Elgin."
Certificate of Registry of Trade-Mark "Elgin Watch Co."
Certificate of Registry of Trade-Mark "Elgin, Ills."
Certificate of Registry of Trade-Mark "Elgin National Watch Co."
File-Wrapper & Contents of Trade-Mark "Elgin" No. 9,810.
File-Wrapper & Contents of Trade-Mark "Elgin" No. 21,462.
Clerk's Certificate.
Citation.

BANNING & BANNING,
Defendants' Solicitors.

Citation.

UNITED STATES OF AMERICA, ss.

The President of the United States, to Elgin National Watch Company, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals, for the Seventh Circuit, to be holden at Chicago within thirty days from the date hereof, pursuant to an appeal filed in the Clerk's Office of the Circuit Court of the United States for the Northern District of Illinois, Northern Division, wherein Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham are appellants, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John W. Showalter, Judge of the Circuit Court of the United States, this 14th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

JOHN W. SHOWALTER,
Circuit Judge.

Service accepted this 14th day of May, 1898.

L. HILL,
Of Counsel for Appellee.

(Endorsed): Filed May 14, 1898. S. W. Burnham, Clerk.

Order extending time to docket.

UNITED STATES CIRCUIT COURT, NORTHERN DISTRICT OF ILLINOIS, NORTHERN DIVISION.

Friday, June 10, 1898.

Present, Honorable John W. Showalter, Circuit Judge.

Elgin National Watch Company
vs.
Illinois Watch Case Company, Thomas W. Duncan and Myer Abraham. } In Chancery.

Now, come the defendants by Messrs. Banning & Banning, their solicitors, and, upon good cause shown, it is hereby ordered that the time for the defendants to file their transcript of record in the Circuit Court of Appeals for the Seventh Circuit be, and the same is hereby extended thirty days from the 12th instant.

259 At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on Monday, the fourth day of October, 1897, of the October term, in the year of our Lord one thousand eight hundred and ninety-seven, and of our Independence the one hundred and twenty-second.

At a regular term of the United States circuit court of appeals for the seventh circuit, begun and held at the United States court-rooms, in the city of Chicago, in said seventh circuit, on Monday, the third day of October, 1898, of the October term, in the year of our Lord one thousand eight hundred and ninety-eight, and of our Independence the one hundred and twenty-third.

And afterwards, to wit, on the third day of October, 1898, in the October term last aforesaid, the following proceedings were had and entered of record, to wit:

260 MONDAY, *October* 3, 1899.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

ILLINOIS WATCH CASE COMPANY ET AL.
vs.
ELGIN NATIONAL WATCH COMPANY. } 525.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

It is now here ordered that this cause be, and the same is hereby, set down for hearing Friday, November 11, 1899.

And afterwards, to wit, on the fourth day of November, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

FRIDAY, *November* 4, 1898.

Present: Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge; Hon. Romanzo Bunn, district judge.

Order.

It is ordered by the court that Romanzo Bunn, judge of the district court of the United States for the western district of
261 Wisconsin, be, and is hereby, designated and assigned to sit in this court as a member thereof during the present session. Thereupon said Bunn appeared and took his seat as a member of said court.

And afterwards, to wit, on the tenth day of November, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

THURSDAY, *November* 10, 1898.

Present: Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge; Hon. Romanzo Bunn, district judge.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. John W. Showalter, circuit judge.

ILLINOIS WATCH CASE COMPANY ET AL.
vs.
ELGIN NATIONAL WATCH COMPANY. } 525.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

It is ordered by the court that this cause be, and the same is hereby, reset down for hearing November 30, 1898.

262 And afterwards, to wit, on the thirtieth day of November, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

WEDNESDAY, *November* 30, 1898.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. Romanzo Bunn, district judge.

ILLINOIS WATCH CASE COMPANY ET AL.
vs.
ELGIN NATIONAL WATCH COMPANY. } 525.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

Now, this day, come the parties, by their counsel, and this cause now comes on to be heard on the printed record and briefs of counsel and on oral argument by Mr. Ephraim Banning, counsel for appellant, and by Mr. Lysander Hill, counsel for appellee, and the court, having heard the same, takes this matter under advisement

And afterwards, to wit, on the sixth day of June, 1899, in the October term last aforesaid, there was filed in the office of the clerk of this court the opinion of the court in said entitled cause, said opinion being in the words and figures following, to wit:

263 In the United States Circuit Court of Appeals for the Seventh Circuit.

ILLINOIS WATCH CASE COMPANY, Thomas W. Duncan, and Mayer Abraham, Appellants,
vs.
ELGIN NATIONAL WATCH COMPANY.

No. 525. Appeal from the Circuit Court of the United States for the Northern District of Illinois.

Before Woods and Jenkins, circuit judges, and Bunn, district judge.

The appellee, The Elgin National Watch Company, filed its bill in equity in the court below, setting forth that it was a corporation organized under the laws of the State of Illinois and having its principal place of business at Elgin and its office at Chicago, in that State; that the defendant, The Illinois Watch Case Company, is a corporation created and organized under the laws of the State of Illinois and having its principal place of business at Elgin, in that State; that the other defendants named were citizens of the State of Illinois and were respectively, the defendant Duncan, president, treasurer and superintendent, and the defendant Abrahams, secretary of the Illinois Watch Case Company. That prior to April 11, 1868, the complainant engaged in manufacturing watches at Elgin, then a small town containing no other manufactory of watches or watch cases; that the complainant built up a large business in such manufacture, and that the watches and watch move-
264 ments so made by complainant have become known all over the world and have been largely sold and used both in the United States of America and in foreign countries; that before that date the complainant had adopted the word "Elgin" as a trade-mark for its watches and watch movements; which word was marked upon the watches and watch movements, both those which entered into commerce in this country and those exported to and sold in foreign countries, and that the complainant's watches became known all over the world as Elgin watches, which word declared their origin and source as a product of the complainant's manufacture, and they became known from those of all other watches by the distinguishing word or trade-mark "Elgin," which word, at the time of its adoption, had been appropriated by no other person, firm or corporation as a trade-mark or designation of goods. This trade-mark the complainant caused to be registered on the 19th day of July, 1892, under the act of Congress relating to the registration of trade-marks, approved March 3rd, 1881 (21 Stat., 502). That the defendants have infringed upon the rights of the complainant by engraving or otherwise affixing the word "Elgin" to watch cases made and sold by them; that such watch cases are adapted to receiving watch movements of different construction from those made by the complainant; that inferior watch movements are liable to be and often are encased in them, and when so encased the entire watch, including both movement and case, appears upon the market with the word "Elgin" upon it, thereby leading the public to believe that such watch as an entirety was

made by the complainant, and enabling parties unlawfully using the word "Elgin" to profit by the great reputation of the complainant, to palm off other and inferior goods as the goods made by the complainant, to injure the reputation of the complainant as a watchmaker and to deprive it of a portion of the business and patronage which it would otherwise receive from the public. The prayer of the bill is for an injunction to restrain defendants "from directly or indirectly making or selling any watch case or watch cases marked with your orator's said trade-mark and from using your orator's said trade-mark in any way upon watches or watch cases, or in the defendants' printed advertisements, circulars, labels or on boxes or packages in which the said watch cases are put up or exposed for sale." A demurrer interposed to this bill, being overruled, defendants answered, denying the legality of the registration of the trade-mark, denying the right of the complainant to the exclusive use of the word as a trade-mark, asserting that they had never manufactured or sold, or offered for sale, watches or watch movements, but that they manufactured at Elgin watch cases only,
265 and that the complainant had never manufactured or sold watch cases with the word "Elgin" upon them; that the business of the two corporations are distinct and separate the one from the other, and that whenever the defendant company had used the name "Elgin" it had usually, if not invariably been done, in connection with some other word as "Elgin Giant," or "Elgin Commander," or "Elgin Tiger," or some other word used in combination with the word "Elgin" or "Elgin, Illinois;" that the company has seldom, if at all, used the word "Elgin" alone or separately as registered by the complainant upon goods exported to foreign nations or used in foreign commerce, but only in domestic commerce and to inform the public of the place where the watch cases of the defendant company were manufactured; that such watches were sold upon a guaranty running for a number of years, so that it became necessary to inform purchasers of the city where the defendant company was carrying on its business that purchasers might be able to find the company in case it became necessary to call upon it to make good its guaranty; that the term "Elgin" is a geographical name, indicating the name of a prominent manufacturing city, and that any manufacturer of watches, watch movements or watch cases, is at liberty to locate or carry on his business thereat, and that the name may not be appropriated by any single manufacturing person, firm or corporation, but is open as a common right to the use of any person carrying on business at that city. To this answer there was a general replication, and upon proofs taken the parties proceeded to a hearing. By leave of the court at or immediately after the hearing and before decree, the complainant amended its bill, alleging that the watch cases so manufactured and marked by the defendants in violation of the complainant's right "are intended by the defendants to be sold in foreign countries and are in fact exported to and sold in foreign countries." A decree passed for the complainant, that the use of the word "Elgin," whether alone or in connection with other words, was a violation and infringement of

the complainant's exclusive rights in the premises, and that an injunction issue restraining the use of the word "Elgin" alone or in connection with other words or devices upon watches or watch cases, or upon packages containing watches or watch cases, going into commerce with foreign nations or with the Indian tribes, in such a way as to be liable to cause purchasers or others to mistake said watches or watch movements encased in such watch cases for watches or watch movements manufactured by the complainant. The opinion of the court below is reported, Elgin National Watch Company *v.* Illinois Watch Case Company, Thomas W. Duncan, and Myer Abraham, 89 Fed Rep., 487.

266 JENKINS, circuit judge, upon this statement of the case delivered the opinion of the court:

It was ruled in Trade-mark cases, 100 U. S., 82, that the act of Congress approved August 14, 1876 (19 Stat., 141), was void for want of constitutional authority, but the court expressly left the question undecided "whether the trade-mark bears such a relation to commerce in general terms as to bring it within congressional control when used and applied to the classes of commerce which fall within that control." That the Congress had no power under the commerce clause of the Constitution to regulate the subject was ruled by the circuit court of the United States for the eastern district of Wisconsin in Leidersdorf *v.* Flint, 8 Bissell, 327. This is the only direct adjudication upon that question. Following the decision of the Supreme Court in the Trade-mark cases, the Congress of the United States enacted the present law, act of March 3, 1881 (21 Stat., 502), limiting its operations to trade-marks used in commerce with foreign nations or with the Indian tribes. There has been no ruling upon the constitutionality of this act, and it need only be said that its validity is fairly doubtful.

The appellee, the complainant below, by its bill asserts and seeks to maintain its right to the use of the word "Elgin" as a trade-mark, claiming that right as one arising under Federal law. It is, of course, clear that this bill cannot be sustained, all of the parties to it being citizens of the same State, unless its right can be sustained as one arising under the laws of the United States. The statute does not define what shall constitute a trade-mark. To determine, therefore, what that trade-mark is which is protected by this statute, we must be referred to the common law. It is not now a question, that no one can acquire an exclusive right to the use of geographical names as trade-marks. Canal Company *v.* Clarke, 13 Wallis, 323; Lawrence Manufacturing Company *v.* Tennessee Manufacturing Company, 138 U. S., 547; Brown Chemical Company *v.* Meyer, 139 U. S., 542; Columbia Mill Company *v.* Alcorn, 150 U. S., 464; Pillsbury-Washburn Flour Mills Company *v.* Eagle, 58 U. S. Appeals, 490; Glendon Iron Company *v.* Uhler, 75 Penn. St., 467; Elgin Butter Company *v.* Elgin Creamery Company, 155 Ill., 136. In Columbia Mills Company *v.* Alcorn, *supra*, the court observes that, "the word 'Columbia' is not a subject of exclusive appropriation, under the general rule that a word or words in common use as designating

locality or section of country, cannot be appropriated by any one as his exclusive trade-mark. * * * The appellant was no more entitled to the exclusive use of the word "Columbia" as a
267 trade-mark, than he would have been to the use of the word "America" or the "United States" or "Minnesota" or "Minneapolis." These merely geographical names cannot be appropriated or be made the subject of exclusive property; they do not in and of themselves indicate anything in the nature of origin, manufacture or ownership."

But while one cannot obtain the exclusive right to use a geographical name as a trade-mark, and cannot make a trade-mark of his own name to deprive another of the same name from using it in his business, that other may not resort to artifice to do that which is calculated to mislead the public as to the identity of the business or of the article produced and so create injury to the other beyond that which results from the similarity of name. There are a large number of cases in which this principle has been declared. Croft *v.* Day, 7 Beavan, 84; Holloway *v.* Holloway, 13 Beavan, 239; Wotherspoon *v.* Currie, L. R. 5 H. L., 508; Thompson *v.* Montgomery, 41 Ch. D., 35; Reddaway *v.* Banham (1896), A. C., 199; Lawrence Manufacturing Company *v.* Tennessee Manufacturing Company, 138 U. S., 537; Brown Chemical Company *v.* Meyer, 139 U. S., 540; Coates *v.* Merrick Thread Company, 149 U. S., 562; Singer Manufacturing Company *v.* June Manufacturing Company, 163 U. S., 169, 186; The American Waltham Watch Company *v.* United States Watch Company, supreme court Mass., March, 1899, as yet unreported. We have spoken to the same effect and with no uncertain sound. Meyer *v.* Dr. B. L. Bull Vegetable Medicine Company, 18 U. S. App., 372, 379; Pillsbury *v.* Pillsbury-Washburn Flour Mills Company, Limited, 24 U. S. App., 395; Pillsbury, Washburn Flour Mills Company, Limited, *v.* Eagle, 58 U. S. App., 490; Kathreiner Malz Kaffe Fabriken mit Beschraenkter Haftung *v.* Pastor Kneipp Medicine Company, 53 U. S. App., 425; Johnson *v.* Bauer, *ib.*, 437; Raymond *v.* Royal Baking Powder Company, 55 U. S. App., 575. This class of cases does not proceed upon the ground of an infringement of a trade-mark, but upon the ground of fraud, and that equity will not permit one, aside from any question of trade-mark, to palm off his goods as the goods of another and so deceive the public and injure that other. It is not necessary in such cases, in order to give a right to an injunction, that a specific trade-mark should be infringed: McLean *v.* Flemming, 96 U. S., 245, 250; but that the conduct of the party should show an intent to palm off his goods as the goods of another. The allegations respecting trade-marks are in such cases only "regarded as matter of inducement leading up to the question of actual fraud." The court below sustained this bill upon the ground that the word "Elgin" had
268 acquired a secondary signification and through a long course of business had come, as applied to watches, to designate the manufacture of the appellee and as an article of approved excellence, and that therefore the word in that connection performed distinctly the function of a trade-mark and could be registered and

upheld as a trade-mark under the act of Congress. In this we think there was error. The word "Elgin" was not and could not be made a trade-mark. The fact that the word had acquired that signification, might be forceful if the word was shown to be used to palm off the goods of one as the goods of another, which, coupled with other evidence evincing intent to mislead and to defraud, would be operative to move a court of equity to prevent the wrong. It is said that the evidence in this case is of that persuasive character which irresistibly leads to the conclusion that here was such gross fraud that a court of equity should not stay its hand, but should enjoin the guilty party from further deception and wrong. Unfortunately, however, if we should concur with counsel to the full extent of his contention, we are, as we think, without jurisdiction to grant relief; or, to say the least, that jurisdiction is of so doubtful a nature and so limited in extent and under an act of doubtful constitutionality, that we must decline to exercise it. The right of the appellee arises under the act of Congress and is limited to a trade-mark. By the statute the right of action is given to him to recover damages "for the wrongful use of said trade-mark," or he may have his remedy according to the course of equity, "to enjoin the wrongful use of such trade-mark used in foreign commerce or commerce with the Indian tribes." It is only by virtue of that statute and for the protection of a right arising under the Federal law, that the appellee has standing in the Federal court, for all the parties to this suit are citizens of the same State. The remedy in equity for fraud to which we first referred, is one which existed before the statute and is not given by it. It was not applied to protect the infringement of a trade-mark, but recognizing the invalidity of the supposed trade-mark was applied for the prevention of fraud; and that a Federal court may have jurisdiction in such a case we think there must exist and appear from the record the necessary diverse citizenship of the parties.

It may also be remarked that this bill is not framed upon any theory of fraud or fraudulent conduct upon the part of the defendants thereto, except as it is to be inferred from the use of the complainant's registered trade-mark. It is not alleged that they have ever represented or sold their goods as the goods manufactured by the complainant. The one is a manufacturer of watch
269 movements, the other of watch cases. To be sure, it is claimed, and possibly is established by the proof, that the watch cases of the appellants have been used by dealers to contain watch movements of inferior quality to those made by the appellee and possibly the purchaser deceived into believing that he had purchased a watch manufactured by the appellee. But this is not charged to have been done by the appellants or with their knowledge or consent, or that they have entered into any scheme or combination to impose upon the public. The only imposition suggested is the possibility that from the general reputation of the watches manufactured by the appellee and their known designation as Elgin watches, confusion is likely to result and the purchaser be induced to purchase the one article when he desires another. That might

result from the lawful use of a geographical name, and is without remedy unless coupled with fraud upon the part of the appellants or those acting for and under them. However strong, the proof must respond to the allegations of the bill; so that whether we consider the case from the standpoint of jurisdiction or from the case made by the bill, we are constrained to the conclusion that the decree below was erroneous. The courts of the State furnish ample remedy for the wrong, if any, under which the appellee suffers. We have no right to redress or prevent trespass upon the common-law rights of the appellee, the citizenship of the parties forbidding jurisdiction. If it were allowable to us to assume jurisdiction to grant equitable relief upon the ground of fraud, if the bill were aptly framed to that end, the relief could only extend in restraint of the wrong, so far as it affected foreign commerce and commerce with the Indian tribes. The proofs show that such commerce in the case before us has been so slight as to be practically immaterial, and that the real controversy is concerning State and interstate commerce in the manufactured article. Complete remedy for the wrongs suffered by the appellee can only be given in the courts of the State in which the parties are resident. It is therefore not becoming, as we think, to assume a doubtful jurisdiction under a statute of doubtful validity.

The decree is reversed and the cause remanded with direction to the court below to dismiss the bill.

270 And afterwards, on the same day, to wit, on the sixth day of June, 1898, in the October term last aforesaid, the following further proceedings were had and entered of record, to wit:

TUESDAY, *June* 6, 1899.

Present: Hon. Henry B. Brown, circuit justice; Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge.

Before Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge; Hon. Romanzo Bunn, district judge.

ILLINOIS WATCH CASE COMPANY ET AL.
vs.
ELGIN NATIONAL WATCH COMPANY. } 525.

Appeal from the circuit court of the United States for the northern district of Illinois, northern division.

This cause came on to be heard on the transcript of record from the circuit court of the United States for the northern district of Illinois, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that this cause be, and the same is hereby, remanded to the said circuit court, with direction to dismiss the bill.

271 And afterwards, to wit, on the sixth day of June, 1899, in the October term last aforesaid, came the appellee, by its counsel, Messrs. Prindle and Russel, and filed in the office of the clerk of this court its petition for appeal to the Supreme Court of the United States; which petition for appeal is in the words and figures following, to wit:

Petition for Appeal.

United States Circuit Court of Appeals for the Seventh Circuit.

ILLINOIS WATCH CASE COMPANY, THOMAS W. DUNCAN, and Myer Abraham, Appellants,
vs.
ELGIN NATIONAL WATCH COMPANY, Appellee.
} In Equity.

The above-named appellee, conceiving itself aggrieved by the decree entered on the 6th day of June, 1899, in the above-entitled cause, hereby appeals from said decree to the Supreme Court of the United States, and prays that this its appeal may be allowed, and that a transcript of the record, proceedings, and papers upon which said decree was entered, duly authenticated, shall be sent to the Supreme Court of the United States, and that this court shall fix the amount of the appeal bond in such case.

ELGIN NATIONAL WATCH CO.,
By PRINDLE AND RUSSELL,
Solicitors and of Counsel.

Endorsed: Filed Jun- 6, 1899. Edward M. Holloway, clerk.

271½ And afterwards, on the same day, to wit, on the 6th day of June, 1899, in the October term last aforesaid, the following further proceedings were had and entered of record:

TUESDAY, *June* 6, 1899.

Present: Hon. Henry B. Brown, circuit justice; Hon. William A. Woods, circuit judge; Hon. James G. Jenkins, circuit judge.

Now come the appellees, by their counsel, Mr. Lysander Hill, and present their petition for appeal to the Supreme Court of the United States from the decree entered herein on this the 6th day of June, 1899, and move the court that the same be granted.

On consideration whereof it is ordered by the court that said appeal be allowed upon the appellees filing a bond in the penal sum of five hundred dollars, with security to be approved by the clerk of this court.

272 And afterwards, on the same day, to wit, on the sixth day of June, 1899, in the October term last aforesaid, came the appellee, by its counsel, Messrs. Prindle and Russell and Mr. Lysander Hill, and filed in the office of the clerk of this court its assignment of errors; which assignment of errors is in the words and figures following, to wit:

Assignment of Errors.

United States Circuit Court of Appeals for the Seventh Circuit.

ILLINOIS WATCH CASE COMPANY, THOMAS W. DUNCAN, and MYER ABRAHAM, Appellants,
vs.
ELGIN NATIONAL WATCH COMPANY, Appellee.
} In Equity.

And now comes the Elgin National Watch Company, by Lysander Hill and Prindle & Russell, its solicitors and counsel, and says that in the record and proceedings in the above-entitled case there is manifest error in this, to wit:

1. The United States circuit court of appeals for the seventh circuit erred in holding that the circuit court of the United States for the northern district of Illinois had no jurisdiction of this cause.

2. Also in not affirming the final decree of said circuit court in this cause.

273 3. Also in decreeing that the cause be remanded, with directions to dismiss the bill.

4. Also in holding that the act of Congress approved March 31, 1891 (21 St. at L., p. 502, chap. 138), entitled "An act to authorize the registration of trade-marks and protect the same," is of doubtful constitutionality.

5. Also in holding, in substance and effect, that in the proofs in this cause and the law applicable thereto the appellee was not entitled, under the provisions of said act, to register the word "Elgin" as a trade-mark for watches.

PRINDLE AND RUSSELL,
Solicitors and of Counsel.
LYSANDER HILL.

Endorsed: Filed Jul- 3, 1899. Edward M. Holloway, clerk.

And afterwards, to wit, on the fifth day of July, 1899, in the October term last aforesaid, there was filed in the office of the clerk of this court the bond on appeal; which bond is in the words and figures following, to wit:

Appeal Bond.

Know all men by these presents that we, Elgin National Watch Company, as principal, and Charles H. Hulburd, as surety, are held and firmly bound unto Illinois Watch Case Company, Thomas W. Duncan, and Myer Abraham in the full and just sum of five hundred dollars ($500), to be paid to the said Illinois Watch Case Company, Thomas W. Duncan, and Myer Abraham, their certain

274 attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our

heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 5th day of July, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a session of the United States circuit court of appeals for the seventh circuit, in a suit pending on appeal in said court between Illinois Watch Case Company, Thomas W. Duncan, and Myer Abraham, appellants, and Elgin National Watch Case Company, appellee, a decree was rendered against the said Elgin National Watch Company, and the said Elgin National Watch Company having obtained an appeal and filed a copy thereof in the clerk's office of the said court to reverse the decree aforesaid, and a citation directed to the said Illinois Watch Case Company, Thomas W. Duncan, and Myer Abraham, citing and admonishing them and each of them to be and appear at a term of the Supreme Court of the United States to be holden at the city of Washington, D. C., on the second Monday of October, 1899:

Now, the condition of the above obligation is such that if the said Elgin National Watch Company shall prosecute its appeal to effect and answer all damages and costs if it fails to make its plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

ELGIN NATIONAL WATCH CO.,
[CORPORATE SEAL.] By CHARLES H. HUBER, *Pres.*
CHARLES H. HUBER. [SEAL.]

Sealed and delivered in the presence of—

JNO. M. CUTTER.
GEO. S. PRINDLE.

Approved:

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed: Filed Jul- 5, 1899. Edward M. Holloway, clerk.

275 United States Circuit Court of Appeals for the Seventh Circuit.

I, Edward M. Holloway, clerk of the United States circuit court of appeals for the seventh circuit, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 274, inclusive, contain a true copy of the transcript of the record and proceedings in the United States circuit court of appeals for the seventh circuit, in the case of Illinois Watch Case Company, Thomas W. Duncan, and Myer Abraham *vs.* Elgin National Watch Company, No. 525, October term, 1899, as the same remains upon the files and records of the United States circuit court of appeals for the seventh circuit.

Seal United States Circuit Court of Appeals, Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals for the seventh circuit, at the city of Chicago, this seventh day of July, A. D. 1899.

EDWARD M. HOLLOWAY,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

Endorsed on cover: File No., 17,493. U. S. circuit court of appeals, 7th circuit. Term No., 379. Elgin National Watch Company, appellant, *vs.* Illinois Watch Case Company, Thomas W. Duncan, and Myer Abraham. Filed August 17, 1899.